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Supreme Court, U.S.
FILED

No. 10-321 AUG 14 2010

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# In the Supreme Court of the United States

Guy W. Parker d/b/a/ Parker International,
Petitioner,

v.

United States Air Force, *ET AL.*
Respondents.

**On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Federal Circuit**

## PETITION FOR WRIT OF CERTIORARI

Guy W. Parker
Contract FA8621-04-D-6250
14924 Conchos Dr.
Poway CA 92064
858-486-6469

## THE U. S. AIR FORCE ASKS THE TRIBUNALS

### QUESTION 1: CDA § 6 (A) CO OF RECORD

– Is a Pub. L. 95-563 amended (CDA) E1 contractor bound by CDA § 6 and 48 C.F.R. § 4.101 E21 to only recognize the agency contracting officer whose name is typed and signed on the contract as the agency Contracting Officer of Record (CO). E4 Is a SF30 bilateral signed agreement or bilaterally agreed unilateral agreement required to install a new agency CO of Record? See SF30 example A3 P. 60.

### QUESTION 2: CDA § 6 (D-E) ADR REQUESTS

– Does Pub. L. 95-563 amended (CDA) § 6 (d)-(e) E10 require a written answer upon contractor request to the CDA § 6 48 C.F.R. § 4.101 E21 Contracting Officer of Record (CO)? When a contract term states "at the request of either party, delays impacting the program or contractor shall be resolved by ADR" is ADR mandatory on request of either party? When the 48 C.F.R. § 4.101 E21 CO provides no Pub. L. 95-563 amended (CDA) § 6 (e) E10 written ADR answer is statutory law violated and the contract breached?

### QUESTION 3: DECLARATORY JUDGMENT

– What statute(s) provides statutory 1978 92 Stat. 2383 Armed Services Board of Contract Appeals (ASBCA) and Court of Federal Claims (USCOFC) Pub. L. 95-563 amended (CDA) declaratory judgment jurisdiction, injunctive relief jurisdiction, and declaratory judgment authority to change the CDA § 6(a) 48 C.F.R. § 4.101 CO of Record? See E28 P. 35

### QUESTION 4: CONGRESSIONAL BREACH

– Why does a contractor have to wait until after the performance period to file a Pub. L. 109-364 § 832 120 Stat. 2331 Congressional breach claim? E9

## RULE 14.1(b) STATEMENT
## PARTIES

Guy W. Parker — Petitioner
14924 Conchos Dr.
Poway CA 92064

United States Air Force — Respondent
1670 Air Force Pentagon
Washington, DC 20330

## INTERESTED PARTIES

AFMC/PKPB Michael L. Grove agrees he is the AFMC/ASC/YW 48 C.F.R. § 4.101 CO of Record [E4] for this ASC/YW Predator Unmanned Air Vehicle Contract FA8621-04-D-6250, he was moved to HQ in 2005, and ASC/YW was decommissioned in 2005. [E8]

AFMC/ASC Patsy J. Reeves agrees she is the HCA Director of Contracting and is the 48 C.F.R. § 1.6 CO of Authority for Contract FA8621-04-D-6250.

ASC/677th Betty W. Clingerman agrees she was the F33657-01-D-2077 0007 competing contract delivery order officer [E6], does not hold an AFMC/ASC issued SF1402 [E6], has a blanked SES/DCS organization SF1402 [E6], and states in her notarized document she is the CO by "self assignment" "implied consent".

Alan C. Gaudette agrees he was the CO representing AFMC sole source contracts 1998–2001 upon which follow-on FA8621-04-D-6250 is based. See A21 P. 84

## RULE 29.6 STATEMENT
## CORPORATE DISCLOSURE STATEMENT

The real petitioner's name is in the caption, a California citizen sole proprietor not a corporation. The agency disputes well settled plain language CDA § 6 (a) law, 48 C.F.R. § 1.6, § 4.101 regulations, and contract terms of this five-year negotiated sole source contract follow-on, not closed, spanning 1998-2008.

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48 C.F.R. § 1.602-1 CO authority available
(a) Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see 1.603-1) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel. (b) No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met. ..... 6, 13

48 C.F.R. § 33.211
(v) Paragraph substantially as follows:
.... appeals to the agency board of contract appeals, you may.... you may bring an action directly in the United States Court ofFederal Claims..... ..... 7

48 C.F.R. § 4.101
SUBPART 4.1-CONTRACT EXECUTION 4.101 Contracting officer's signature. Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart)
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Contract FA8621-04-D-6250 Clause H101 SOLICITATION NUMBER (APR 1998) P.9 of 14 E30 "The government does not own the data rights for the system and, therefore, cannot compet this effort." ..... 5

Contract FA8621-04-D-6250 Clause H103 ORDERING PROCEDURES (DEC 2003) P.9 of 14 (a) Performance can be authorized under this contract only by the issuance of individual orders signed by an ASC/YW Procuring Contracting Officer (PCO). Order modifications thereto may be issued by ASC/YW PCOs or Administrative Contracting Officers (ACOs). ..... 17

Contract FA8621-04-D-6250 Attach 1 P. 25 100. Attach 10: Other Tasks as May Be Required: 100.1 Introduction. This attachment enables the expansion of the MTT statement of work to include other UAV training system related functionality. Such functionality may be based upon the needs of Government agencies inclusive of, but not limited to the Department of Defense (DoD), Defense Threat Reduction Agency (DTRA), National Nuclear Security Administration (NNSA), National Aeronautics and Space Administration (NASA), Department of Energy (DOE), Environmental Protection Agency (EPA), and Department of Homeland Security (DHS). 100.2 Tasks. The contractor shall respond to requests for proposals, as required, by agencies for additional work consistent with 100.1 above. Coordination and cognizance of project officer and contracting officer shall be maintained. ..... 3

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## JURISDICTION

No USCAFC / ASBCA hearings [E29] were provided. Per Curiam Affirmation 2010-1153 "For the Court" was entered 09JUN2010. [E2] A Petition for Hearing was denied "For the Court" 15JUL2010. [E2] 28 U.S.C. § 1254(1) jurisdiction for this court is invoked.

USCAFC Per Curiam Affirmation (PCA) 2010-1153 09JUNE2010 opinion was formed without panel examination of the briefs or the facts "For the Court".

The PCA was not constrained by the P. L. 95-563 amended (CDA) and 28 U.S.C. 1491 (a) (2) non-monetary dispute claim presented to and responded by the 48 C.F.R. § 4.101 CO of Record Michael L. Grove as required by CDA law and 48 C.F.R. § 4.101 regulation amplified in Alliant Techsystems, Inc. v. U.S., 178 F.3d 1260 (Fed. Cir. 1999).

The PCA "For the Court" decision evidences no de-novo review required by law of the 28 U.S.C. 1491 (a) (2) non-monetary dispute claim that limited ASBCA 56742 and USCAFC 2010-1153 jurisdictions. [E13] The PCA is based on violations of ASBCA Rule 10 [E22] and USCAFC Rule 34. [E2] The USCAFC court clerk confirmed the filed briefs were not submitted to and were not reviewed by the panel. Both tribunals denied hearings [E29] required to prevent substitution of the non-monetary dispute claim with monetary claims and CO substitution by declaratory judgment.

## 1. REASONS FOR GRANTING PETITION SUMMARY OF NON-MONETARY DISPUTE

In an ongoing unresolved non-monetary dispute since January 2005, Guy W. Parker asked the P. L. 95-563 § 6 48 C.F.R. § 4.101 Contracting Officer (CO) of Record Michael L. Grove [E4] for a CDA Section § 6 (a) Final Decision asking to whom to send an invoice.

CO Grove had been moved to HQ AFMC FY2005. The AFMC/ASC/YW contract organization was decommissioned/dismantled in JAN2005. Congress prohibited future funds for this five-year Military Flight Simulator Service Contract in 2006.

Competing Contract Delivery Order Officer [E6] Betty W. Clingerman had refused to provide the U. S. District Court Southern District California (USDC-SDCA) her AFMC/ASC Certificate of Appointment SF1402 [E3] in violation of 48 C.F.R. 1.602-1. [E11] Clingerman did not appeal the order [E3] she was not party to Contract FA8621-04-D-6250:

> Parker: "There is one invoice appended to this document, SER 9-11 .... Betty W. Clingerman is not party to this contract as evidenced in the attached United States District Court Southern District of California Court Order." [E7 & E11]

Mr. Grove responds to the non-monetary dispute:

> CO Grove: "As you are aware, I left Training System Product Group (ASC/YW) in October 2004 [FY2005] to accept a position at HQ Air Force Material Command.... Therefore, I am not authorized to act on your request." [E8]

The non-monetary dispute [E7] was presented for equitable relief resolution: remand to DCMA for Terminating Contracting Officer appointment and Termination for Convenience contract closeout.

## SUMMARY OF HEARING DENIALS

ASBCA denied the requested mandatory Rule 10 Pre-trial Hearing. [E22] ASBCA substituted the nature of the ASBCA 56742 non-monetary dispute appeal to two monetary claims never presented to CO Grove.

USCAFC denied appellate hearing [E29] by law clerk summary memorandum denying hearings and oral argument without the filed briefs submitted to and reviewed by the panel in violation of FRAP Rule 34.

USCAFC provided no de novo review of the ASBCA 56742 non-monetary dispute CO decision request and CO Grove's 48 C.F.R. § 33.211 et.seq deemed denial. ASBCA/USCAFC substituted the 48 C.F.R. § 4.101 CO of Record Michael L. Grove with Competing Contract [E6] F33657-01-D-2077 D0007 Betty W. Clingerman (A5 P. 62):

"Guy W. Parker appealed the denial of two claims for payment of invoices for services provided pursuant to a contract with the government. The Board dismissed Mr. Parker's appeal for lack of jurisdiction." [The preceding is a false statement]

"On February 15, 2006, [competing contract [6]] contracting officer Betty W. Clingerman informed Mr. Parker that the Air Force would not be placing any additional delivery orders under the Contract following calendar year 2006." [FA8621-04-D-6250 Attach 1 P. 25 Task 100 prevents ANY CO from speaking for the entire Air Force or other Agencies]

"Ms. Clingerman further cautioned Mr. Parker "not to do any work outside the scope of the current Delivery Order, D004." In subsequent [competing contract [E6]] correspondence, Mr. Parker was informed that any issue relating to his contract should be addressed to [competing contract [E6]] contracting officer Clingerman."

## SUMMARY OF ASBCA OPINION BY ADMINISTRATIVE JUDGE FREEMAN

We, the ASBCA Panel, agree this contractor is bound by P. L. 95-563 amended § 6 and 48 C.F.R. § 4.101 to only recognize Michael L. Grove as the P. L. 95-563 SF26 48 C.F.R. § 4.101 Contracting Officer of Record for this contract. E4 We require the contractor waive his contract and statutory rights, and accept Clingerman E6 as the CO by "implied consent". As shown, Clingerman's SF1402 credentials are invalid.

We issue our ASBCA declaratory judgment that Clingerman E6 is the new P. L. 95-563 amended § 6 Contracting Officer of Record by "implied consent". Unless Mr. Parker accepts our coercion that Clingerman is the new CO by implied consent, there will be no tribunal in the U. S. that has jurisdiction for Contract FA8621-04-D-6250 contract disputes.

We do not base our declaratory judgment on the four corners of Contract FA8621-02-D-6250. We understand that Clingerman E6 was a competing contract delivery order officer, does not have an AFMC/ASC issued 48 C.F.R. SF1402 Certificate of Appointment for AFMC/ASC delegated authority, and Clingerman's SES/DCS 48 C.F.R. SF1402 Certificate of Appointment delegated authority is not authorized for any specified USAF organization. E3 E6

We understand Clingerman did not have the required ten years of experience by NOV1991 to receive the 1992 SES/DCS SF1402 with the blank organization field. E6 By our declaratory judgment Clingerman has "ALL USAF" delegated authority not authorized in 48 C.F.R. We affirm in all respects our authority to override law and regulations to issue this unilateral CDA § 6 CO contract change.

## AFFIDAVIT OF ALAN C. GAUDETTE

I, Alan C. Gaudette, was the Contracting Officer (CO) representing the government for the 1998-2001 contracts that base CO Grove's 2002-2008 contracts. Accepted as the independent ADR moderator, I have first-hand participation in this contract's execution.

CO Michael L. Grove states in his published solicitations E30 included in Contract Clause H101 E12 and within his and his legal department signed sole-source justifications for FA8621-04-D-6250 and the previous contract F33657-02-C-2034 the government does not own the eight 1998 Predator Training Systems (PMTTs) hardware system data-rights.

The agency leases the hardware system data-rights by purchasing firmware EULAs (End User License Agreements) time-stamped to a specific Predator Unmanned Air System Upgrade. The operating system terminates the use of the hardware system data-rights CLIN 200 Software EULA on a specified date. ASBCA affirms the contract's top-level terms provide the eight PMTT systems are this contractor's Government Furnished Equipment (GFE) 2004-2008 and through closeout. This contract is not closed.

By statutory 1978 ASBCA declaratory judgment not authorized by Congress and without presentation of substantial evidence AFLOA/JAQ, ASBCA, and USCAFC substitute CO Grove with Delivery Order Officer (DOO) Clingerman and changed the non-monetary dispute to a monetary dispute as shown in the AFLOA pleadings and opinions with indifference to *Consolidated Defense Corp.*, ASBCA No. 52315, 03-1 BCA ¶ 32,099 at 158,668 where: "A [CDA] claim cannot be raised for the first time in the pleadings".

All matters of law and fact herein and within this petition were submitted to the ASBCA and USCAFC panels. Hearings [E29] were denied by the ASBCA and USCAFC panels required to validate the filed briefs were physically received and reviewed by the panels.

CDA § 6 and 48 C.F.R. § 33.2 et. seq. provide ASBCA and USCAFC jurisdiction is limited to this contractor's Non-Monetary Dispute Claim Request as amplified in *Consolidated Defense Corp. ID.* There is one plain language law and regulation that controls ASBCA/ USCAFC jurisdiction by law and precedent:

- P. L. 95-563 92 STAT 2384 § 6 DECISION BY THE CONTRACTING OFFICER;
- THE CONTRACTING OFFICER is defined by 48 C.F.R. § 4.101. (See A8 P. 66)

ASC/YW was dismantled in 2005 and CO Grove was moved to HQ AFMC/PKPB in 2005. No written contract changes exist within FA8621-04-D-6250 2004-2008 contract's four corners that changed the ASC/YW issuing organization or the CO of Record.

ASC/677th Clingerman, referenced throughout both panel's opinions, is without supporting evidence of AFMC/ASC issued SF1402 CO delegated authority, AFMC/ASC assignment as the 48 C.F.R. § 4.101 CO, and ratification by this contractor as the CDA CO.

Clingerman alleges by her notarized testimony she is this contract's CO by her own "self assignment" and alleges by this contractor's "implied consent". In attempt to ratify Clingerman in 2006, Clingerman refused to provide her SF1402 outside of litigation and in the U.S. District Court San Diego 2007 in violation of 48 C.F.R. § 1.602-1 "readily available". [E3]

Congress does not provide statutory 1978 ASBCA declaratory judgment authority that Clingerman:

- has AFMC/ASC CDA CO authority;
- is this contract's 48 C.F.R. § 4.101 CDA CO; and
- has "ALL USAF" delegated authority by SES/DCS SF1402 form's blank organization field. E3 E6

A CDA 28 U.S.C. 1491(a)(2) Non-Monetary Dispute Claim Request was presented to the 48 C.F.R. § 4.101 CO Grove as required by CDA with an appended invoice. [7] CO Grove provided a written 48 C.F.R. § 33.211 non-monetary dispute deemed denial 02FEB2009 appealed to ASBCA 09FEB2009.

The requested relief remains to remand to DCMA for Termination for Convenience (T4C) closeout. E8

ASBCA/USCAFC was provided contract evidence:

- The government did not purchase and does not own the 8 PMTT hardware system data-rights.
- This five year ASC/YW contract was signed 2004;
- CO Grove was moved to HQ AFMC/PKPB in 2005;
- ASC/YW was decommissioned in 2005;
- P. L. 109-364 § 832 120 Stat. 2331 prohibited O&M funds for this 2004-2008 Military Flight Simulator Service Contract in 2006;
- No change of CO or issuing organization exists;
- ASC/677th was created in JUN2006;
- Contract Attachment 7 ¶ 1.0 EULA was breached when ASC/677th moved UAV-MTT-003 to Brooks AFB for use on another contract in NOV2006;
- The government has not purchased the eight PMTT hardware system data-rights;
- PMTT UAVMTT003 remains this contract's GFE;
- This contract remains open, it has not been closed.

Upon denial of the requested mandatory ASBCA Rule 10 pre-trial conference E22, without substantial evidence, ASBCA changed the ASC/YW non-monetary dispute to monetary claims and declared a CDA § 6 CO change for this contract by Clingerman's "self assignment" through alleged "implied consent".

Upon denial of USCAFC Rule 34 oral argument E2 USCAFC issued "For the Court" Per Curiam Affirmation changing the non-monetary dispute to monetary claims and the 48 C.F.R. § 4.101 CO.

USCAFC provided no de-novo review of the non-monetary dispute as evidenced within the PCA. E7

Oral hearing E29 was denied by a law clerk's non-public written summary approved "For the Court" without briefs submitted to or reviewed by a three judge panel in Rule 34(a)(2) standards violation. E2

The USCAFC 2010-1153 PCA:

- Is contrary to *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) that creates lower tribunal precedent eroding P. L. 95-563 amended and 48 C.F.R.;
- Encourages agencies to violate P. L. 95-563 amended and 48 C.F.R. regulations;
- Increases caseload litigation and discourages out of tribunal resolution and ADR resolution; and
- Requires answers to four uncontested CDA law and regulation questions of national importance to all public contractors the agency now disputes.

Affirmed this 12AUG2010, /s/ Alan C. Gaudette

State of Arizona County of Maricopa
Subscribed and sworn before me on Aug. 12. 2010 (Date)
(Notary Signature)

OFFICIAL SEAL
DANIEL HERNANDEZ
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires October 05, 2012

## 2. CONTRACTOR ARGUMENT
## QUESTION 1 PLAIN LANGUAGE ANSWER

Are the contractor, agencies, and tribunals bound to 48 C.F.R. § 4.101.... and all 48 C.F.R.?

Yes, except when in conflict with the constitution. P. L. 95-563 92 Stat. 2384 § 6 DECISION BY THE CONTRACTING OFFICER § 6(A): "All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. " E14

48 C.F.R. § 4.101 Contracting Officer's Signature: "The contracting officer's name and official title shall be typed, stamped, or printed on the contract."

48 C.F.R. § 1.601: "Contracting officers below the level of a head of a contracting activity shall be selected and appointed under [48 C.F.R. §] 1.603."

48 C.F.R. § 1.601 CO SF1402 HCA delegated authority by the contracting activity prohibits the competing contract delivery order officer's SES/DCS SF1402 blank organization SF1402. E3 E6 A8 P. 65.

## QUESTION 2 PLAIN LANGUAGE ANSWER

Is an answer to an ADR request mandatory....?

Yes, it is mandatory. P.L. 95-563 AMENDED § 6 (D-E): "Notwithstanding any other provision of [P. L. 95-563 amended], in any case in which the CO rejects a contractor's request for alternative dispute resolution proceedings, the contracting officer shall provide the contractor with a written explanation."

CONTRACT ATTACHMENT #7 ¶ 1.1: "At the request of either party, delays impacting the program or contractor shall be resolved by ADR."

Upon ASC/YW decommission and move of the CO to HQ AFMC there was no CO to answer ADR requests.

## QUESTION 3 PLAIN LANGUAGE ANSWER

Does the Armed Services Court of Appeals and the United States Court of Federal Claims have P. L. 95-563 amended (CDA) declaratory judgment jurisdiction and declaratory judgment authority to change the 48 C.F.R. § 4.101 CO of Record…?

None is provided. [E16] Congress provides Statutory 1978 ASBCA/USCOFC mandatory Non-Monetary Dispute and Alternative Dispute Resolution jurisdictions to reduce contracting costs. Congress rejected the Department of Justice (DOJ) suggestions of strict limitations on the power of the USCOFC to resolve nonmonetary disputes. Congress does not provide either tribunal CDA declaratory judgment authority to change the CO. After losing in Congress the USDOJ continues their argument to create precedent. Congress does not provide ASBCA or USCOFC declaratory judgment or injunctive relief jurisdiction as part of CDA due process. Bid-protest declaratory judgment and injunctive relief is provided to USCOFC outside of the CDA process.

ASBCA/USCOFC determined their Non-Monetary Dispute and Alternative Dispute Resolution (ADR) jurisdictions are discretionary, voiding statutory law. USCAFC determined self-litigant contractors are prohibited from Alternative Dispute Resolution by "their" Congressional mandate. ASBCA/USCOFC requests the agencies write summary judgments removing disputed genuine material facts by declaratory judgments not authorized by Congress. 48 C.F.R. § 1.602-1 demands SF1402 information be available on request. Contractors retain the right and responsibility to qualify and validate an agency employee has valid SF1402 agent credentials. [E3]

**QUESTION 4 PLAIN LANGUAGE ANSWER**

Why does a contractor have to wait to file Congressional breach until the contract period of performance expires...?

P. L. 109-364 § 832 Military Flight Simulator Service Contract O&M funds prohibition provides the CO of Record Michael L. Grove may request a waiver. If no waiver is requested, the contract is effectively terminated for the convenience of Congress:

> "Congress may announce the Government's intent to dishonor an obligation to perform in the future through a duly enacted law, so may it retract that renouncement prior to the time for performance, thereby enabling the agency or contracting official to perform as promised. We comprehend no reason why an Act of Congress may not constitute a repudiation of a contract to which the United States is a party. Congress may renounce the Government's contractual duties without triggering an immediate breach because Congress may withdraw that repudiation if given the opportunity to do so." See *Franconia Associates, et al., v. U.S.*, 536 U.S. 129

For this contract, Michael L. Grove was disabled, was unable to respond to the congressional waiver request, and he was unable to provide a Notice of Termination for Convenience to the DCMA ACO.

The AFMC/ASC/YW Memorandum of Agreement with DCMA was terminated when ASC/YW was decommissioned in JAN2005. There was no DCMA ACO to appoint a DCMA Terminating Contract Officer for contract closeout. This contract remains open without a CO of Record or a DCMA ACO.

## ASBCA 56742/56928 CONTRACT HISTORY

AFMC/ASC/YW Military Flight Simulator Service Contract (Contract Clause Part II Section I P. 11 of 14 52.222-48) Contract FA8621-04-D-6250 CY2004-CY2008 (CO Michael L. Grove) is a follow-on contract to AFMC/ASC/YW Military Flight Simulator Service Contract F33657-02-C-2034 FY2002-FY2004 (CO Michael L. Grove) that followed AFMC/ASC/YW Military Flight Simulator Service Contract F33657-01-C-0029 FY2001-FY2002 (CO Sue L. Tormey) that followed AFMC/AFRL Military Flight Simulator Service Contract F41624-97-D-5000/01 FY1998-FY2001 (SCO Alan C. Gaudette). The entire contract sequence spans 1998 through 2008. All contracts were supported by published Requests For Proposals (RFPs) and signed Sole Source Justifications Authorizations E30 that are incorporated into Contract FA8621-04-D-6250 at Contract Clause H101 Contract P. 9 of 14 A13 P. 73.

CO Michael L. Grove, CO Sue L. Tormey, and SCO Alan C. Gaudette confirm and bind into each of the Military Flight Simulator Service Contracts listed above these facts:

- The government has not purchased and does not own the hardware system data-rights for the eight Predator Unmanned Air Vehicle Systems UAV-MTT-001 through UAV-MTT-008 assembled by USAF/ACC/TRSS Det 1 Luke AFB in 1998. E30
- Guy W. Parker d/b/a/ Parker International (PI) owns the above eight Predator Unmanned Air Vehicle Systems hardware system data-rights. E30
- The PMTT hardware system design was funded by PI private funds. The USAF may purchase the system data-rights at contract completion. E30

**ASBCA 56742 NONMONETARY REQUEST**

The ASBCA 56742 28 U.S.C. § 1491 (a) (2) Non-Monetary Dispute (NMD) Claim Request is an on-going unresolved dispute since JAN2005 when ASC/YW was decommissioned and the CO of Record Michael L. Groove was moved to HQ AFMC/PKPB.

In 2007 the U.S. District Court San Diego issued a court order E19 declaring Betty W. Clingerman is not party to FA8621-04-D-6250. E3 Clingerman refused to provide an SF1402 COA outside of litigation and in that court in violation of 48 C.F.R. § 1.602-1. In accord with 48 C.F.R. § 1.602-1 that case solely requested Clingerman's SF1402, Grove's SF1402 letter of termination, and an SF30 showing ratification to conclusively determine CO authority.

"To: DFAS-CO/NORTH ENTITLEMENT OPER January 19, 2009
PO BOX 182266 COLUMBUS OH 43218-2266
DCMA Dayton Area C Bldg 30 1725 Van Patton Drive, Wright-Patterson AFB OH 45433-5302

Attn: ACO David Schlatter 937-656-3018
Brenda Johnson 937-656-3009
CO Michael L. Grove 937-656-0354

From: Guy W. Parker 858-486-6469
Subject: Invoice SER 9-11
Contract Firm Fixed Priced FA8621-04-D-6250

There is one invoice appended to this document, SER 9-11 .... Betty W. Clingerman is not party to this contract as evidenced in the attached United States District Court Southern District of California Court Order."

Please See A11 P. 41 and A12 P. 72. E3

**ASBCA 56742 NONMONETARY RESPONSE**

This contract's 48 C.F.R. § 4.101 CO of Record Michael L. Grove provides a NMD response to the 19JAN2009 28 U.S.C. § 1491 (a)(2) NMD COFD Request on 02FEB2009 providing a 48 C.F.R. § 33.211 Non-Monetary Dispute Contracting Officer decision deemed denial. [E8]

Grove states his non-terminated SF1402 is no longer valid because of his move to HQ AFMC/PKPB. SF26 Block 6 provides the cognizant Administrative Contracting Officer (ACO) is a DCMA ACO with limited MOA authority. [E4] DCMA ACO Schlatter responds he is no longer the ACO, his ASC/YW MOA expired when YW was decommissioned 2005. In April 2009, Clingerman provides, for the first time, a SES/DCS SF1402 that is invalid for this contract. [E6]

"Mr. Parker Monday, February 02, 2009 11:56 AM

As you are aware, I left Training System Product Group (ASC/YW) in October 2004 to accept a position at HQ Air Force Material Command. At this point, my Aeronautical Systems Center Contracting Officer's Warrant was no longer valid. I have not held a Contracting Officer's Warrant since October 2004. Therefore, I am not authorized to act on your request. Any actions related to contract FA8621-04-D-6250 will have to be addressed to the cognizant Administrative Contracting Officer (ACO) or Procuring Contracting Officer.

Thanks, Michael L. Grove
HQ AFMC/PKPB Procurement Analyst Pricing & Program Support Branch
(937) 656-0354 DSN 986-0354"

**ASBCA 56928 NON-MONETARY REQUEST**
**ASBCA 56928 CDA § 6(E) ADR REQUEST**

The ASBCA 56742 Admission of Facts document, confirmed delivered 06APR2009, contains the ASBCA 56928 Contractor Request for a Final Decision and Contractor Request for ADR. One P. L. 95-563 amended § 6(d) 24 Contract Attachment #7 § 1.1 ADR request and one P. L. 95-563 amended § 6(a) final decision request was served on 48 C.F.R. § 4.101 CO of Record Michael L. Grove and 48 C.F.R. § 1.6 CO of Authority Patsy J. Reeves. No CDA § 6(a) response occurred. No CDA § 6(e) ADR written response was provided in law violation:

"In accord with ASBCA Rule 15 or Contract Attachment #7 mandatory ADR on request, the following Admission of Facts and Authenticity of Documents is provided for response. This contractor is bound by 48 C.F.R. § 4.101 to only recognize Michael L. Grove as the Public Law 95-563 SF26 48 C.F.R. § 4.101 Contracting Officer of Record. Should Michael L. Grove be unable to respond, Mrs. Patsy Reeves Director of Contracting Aeronautical Systems Center, WPAFB is the default contracting office[r]. In order to comply with substantial law Public Law 95-563 (amended) a substantial material or constructive change in this contract occurs if the 48 C.F.R. § 4.101 Contracting Officer of Record becomes unable to respond or disabled. Please provide a 48 C.F.R. § 33.211 Final Decision within 60 days from the date of receipt of this document for Breach of Contract based on Admission of Facts 1 through 36." "At the request of either party, delays impacting the program or contractor shall be resolved by ADR."

**56928 MOTION TO RECONSIDER OPINION**

Hearing Officer Freeman's opinion 14JUL2010 provides sufficient documentation ASBCA based both ASBCA 56742 and ASBCA 56928 on their interpretations of the Notice of Appeal (NOA) cover sheet. ASBCA did not base ASBCA 56742 and ASBCA 56928 on the CDA § 6(a) Contractor Non-Monetary Dispute Claim Requests and CO Answers provided by the 48 C.F.R. § 4.101 Contracting Officer of Record Michael L. Grove. See A1B P. 45 A19 P. 79

P. L. 95-563 amended Section 6 provides the contractor limits ASBCA and USCOFC jurisdiction to the contractor's claims presented to the 48 C.F.R. § 4.101 Contracting Officer of Record for a decision:

> ASBCA 56742: "There is one invoice appended to this document, SER 9-11 .... Betty W. Clingerman is not party to this contract as evidenced in the attached United States District Court Southern District of California Court Order."
>
> ASBCA 56928: "This contractor is bound by 48 C.F.R. § 4.101 to only recognize Michael L. Grove as the Public Law 95-563 SF26 48 C.F.R. § 4.101 Contracting Officer of Record." ... "Please provide a 48 C.F.R. § 33.211 Final Decision within 60 days from the date of receipt of this document for Breach of Contract based on Admission of Facts 1 through 36."

In both cases, ASBCA ignored the contractor's non-monetary dispute claim requests to CO Grove. ASBCA issued declaratory judgments substituting CO Grove with DOO Clingerman and contractor non-monetary requests to NOA interpreted monetary claims. The breach is CO abandonment, no ADR § 6(e) answer, and Congressional prohibition of funds.

## UNDISPUTED MATERIAL FACTS

All of the following statements were fully briefed in ASBCA and USCAFC. AFLOA, USDOJ, ASBCA, AFMC/ASC HCA, and the CO admit and agree:

- In CY2004 this P. L. 95-563 amended negotiated sole source E30 five-year follow-on Military Flight Simulator Service Contract FA8621-04-D-6250 was signed by AFMC/ASC/YW Contracting Officer (CO) Michael L. Grove E4. The five-year contract is a follow-on to consecutive contracts: 1998-2008;
- In 2005 Under Secretary for Air Force Acquisition Marvin Sambur decommissioned AFMC/ASC/YW severing Ordering Clause H103 A13 P. 73;
- In 2005 CO Grove was moved to AFMC HQ;
- No written contract modifications Form SF30 for a new organization exists; No written contract modifications Form SF30 for a new CO exist severing CDA § 6; See A8 P. 65;
- Clause H103 was not amended. No ASC/YW CO's existed after JAN2005 to issue delivery orders as stated in Clause H103; See A13 P. 73;
- In CY2006, Congress enacted P. L. 109-364 § 832 prohibiting funding due to the agency's inappropriate use of O&M funds effectively terminating the contract for convenience; E9
- No Notice of Termination for Convenience was issued; This contract remains open; CDA § 6 ADR requests were ignored with no written response;
- No CO of Record with a valid SF1402 remains within this contract's written four corners to issue a Notice of Termination Convenience and assign a DCMA Terminating Contract Officer for closeout;

## DISPUTED FACTS OF LAW

The rules of law requiring judicial review are:

- 48 C.F.R. § 1.601 HCA delegated authority has force and effect of law; See A8 P. 65
- 48 C.F.R. § 1.602-1 "readily available" SF1402 has force and effect of law; See A8 P. 65
- 48 C.F.R. § 4.101 CO Signature on Contract has force and effect of law; See A8 P. 65
- 48 C.F.R. § 33.211 CO Decision is required to state "Final Decision" with a "Notice of Appeal" has force and effect of law; See A8 P. 65
- The USAF is not a commercial entity that may change the 48 C.F.R. § 4.101 CO unilaterally without contractor SF30 bilateral agreement or bilaterally agreed SF30 unilateral change;
- An "ALL USAF" 48 C.F.R. § 1.6 SF1402 CO delegated authority does not exist by blanking the organization field. CO authority is delegated to a specific agency contracting activity organization; E6
- SF1402 organization delegated CO authority may not be implied from an SF1402 numbering schema; E6
- The *Chevron Doctrine* deference to 48 C.F.R. and the FAR Council, No Apparent CO Doctrine, and Congressional Breach Doctrine remain valid.
- CO change by "self assignment" "implied consent" voids *Firestone Tire & Rubber Co. v. U.S.* 444 F.2d 547, 551 (Ct. Cl. 1971) "unexpressed, subjective unilateral intent of one party is insufficient to bind the other contracting party..."

### 3. GOVERNMENT ARGUMENT

The United States Department of Justice (USDOJ) and the Air Force Legal Operations Agency Commercial Law Commercial Litigation Directorate (AFLOA/JAQ) assert a single common argument for the United States Air Force (USAF) applicable to all P. L. 95-563 amended (CDA) contracts:

– "The USAF does not contract that way", AFLOA/JAQ. The USAF is a commercial entity that may substitute the issuing organization and CDA § 6 48 C.F.R. § 4.101 CO of Record by "self assignment" without SF30 bilateral modification or bilateral agreement unilateral modification.

AFLOA/JAQ asserts a false statement without written evidence, accepted by ASBCA and USCAFC with hearings denied E29, that the AFMC/ASC HCA assigned ASC/677th Competing Contract Delivery Order Officer Betty W. Clingerman E3 E6 as the CDA § 6 CO of Record for this ASC/YW contract. The AFMC/ASC HCA denies that assignment. No written evidence of that assignment or FAR § 4.101 SF30 Block 14 Intent CO of Record change exists.

USAF/AFLOA/JAQ does assert with evidence Clingerman: Does not have an AFMC/ASC HCA 48 C.F.R. § 1.6 SF1402 (COA); Is without 48 C.F.R. § 1.601 ASC HCA contracting officer delegated authority; Is not the AFMC/ASC/YW 48 C.F.R. § 4.101 Contracting Officer of Record for this contract; The eight PMTTs were developed in 1998 with mixed public/private funds; This contractor owns the privately funded eight PMTT hardware system data-rights; The eight PMTTs are contractor GFE at the contract's top-level for the performance period 2004-2008 and through closeout.

## 4. TRIBUNAL ARGUMENT GEORGE MILLER HEARING OFFICER

The USCAFC PCA of 09JUN2010 refers to two case polices, *James M. Ellett Const. Co., Inc. v. United States*, 93 F.3d 1537, 1542 (Fed. Cir. 1996) and *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1577-78 (Fed. Cir. 1995) (en banc). These case cites reference 48 C.F.R. vintage 1988 before 28 U.S.C. 1492(a) (2) was amended for non-monetary disputes in P. L. 102–572 Oct. 29, 1992 106 Stat. 4516, 4519.

*Ellett* defers to 1988 48 C.F.R. § 33.201-§ 33.215 to define a claim and states the claim is required to be submitted to the 48 C.F.R. § 4.101 "the contracting officer". 48 C.F.R. §§ 33.2 et. seq. does not use the phrases "a contracting officer", "cognizant contracting officer", or "contracting officer without "the"". *Ellett* provides the claim does not require an explicit request for final decision as long as what the contractor desires by its submission is final can be implied from submission context. *Reflectone,* limited to Request for Equitable Adjustments monetary claims, provides no preexisting dispute is required.

NMD USCOFC PI filings in 2006 resulted in USCOFC Hearing Officer George Miller's detailed review of USCOFC/ASBCA Non-Monetary Dispute jurisdiction No. 07-324 filed 09DEC2008 continued in No. 07-324 C filed 22JUL2009. [E20] He explains USCOFC was enacted as an agency acting in Article I tribunal capacity and does not have constitutional authority to direct the actions of another agency, the same argument USDOJ lost in Congress amplified in Alliant Techsystems, Inc. v. U.S. 178 F.3d 1260 (Fed. Cir. 1999). [E13] He concludes a constitutional question only monetary cases are valid voiding statutory law.

## TRIBUNAL ARGUMENT
## DIANE WEINSTEIN HEARING OFFICER

The contract term SF26 P. 1 E4 that Michael L. Grove is the CDA 48 C.F.R. § 4.101 CO of Record cannot be rendered useless, inexplicable, inoperative, void, insignificant, meaningless, or superfluous unless a written SF30 Block 14 Intent CO Change occurs. Non-Monetary Dispute (NMD) request and answer E8 limits ASBCA jurisdiction solely to this contractor's non-monetary request for Notice of Termination for Convenience (T4C) and remand to DCMA for T4C negotiations and closeout. USCOFC Hearing Officer Diane Weinstein states: E23

"This court also has jurisdiction "to render judgment upon any [CDA] claim . . . including . . . nonmonetary disputes on which a decision of the contracting officer has been issued ...." 28 U.S.C. 1491 (a) (2). See Alliant, 178 F.3d at 1265."

"48 C.F.R. § 33.201 ("Claim, as used in this subpart, means a written demand or assertion by one of the contracting parties seeking.... the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract."). There is no requirement... under 28 U.S.C. 1491(a)(2) to request a sum certain." "While CDA claims must request a contracting officer's final decision, James M. Ellett, 93 F.3d at 1542, "a request for a final decision can be implied from the context of the submission." Id. at 1543. "'[M]agic words' need not be used." Transamerica Ins. Corp. v. United States, 973 F.2d 1572, 1578 (Fed. Cir. 1992). The request need not be explicit, but only show "an 'expression of interest,' which may be made implicitly." Id. at 1577."

"'"The plain language of § 605 requires claims against the Government to be submitted to the contract officer. It does not, however, require that the claims be sent only to the contracting officer, or necessarily directly to that officer...." *D.L. Braughler Co. v. West*, 127 F.3d 1476, 1481 (Fed. Cir. 1997) (citing *Neal & Co. v. United States*, 945 F.2d 385, 388-89 (Fed. Cir. 1991)); see also *Dawco Constr., Inc. v. United States*, 930 F.2d 872, 880 (Fed. Cir. 1991) (submission requirement satisfied so long as contractor commits its claim to the CO's authority to make a final decision).... Several pieces of correspondence or documents may together form a valid claim. See *Contract Cleaning Maintenance*, 811 F.2d at 592."

"When the parties dispute the meaning of a contract, the court first considers its plain language. See *Northrop Grumman Corp. v. Goldin*, 136 F.3d 1479, 1483 (Fed. Cir. 1998). Particular contractual provisions are read in the context of the entire agreement, and may not be construed so as to render portions meaningless. See Dalton, 98 F.3d at 1305. "An interpretation of a contract that makes any part "useless, inexplicable, inoperative, void, insignificant, meaningless, superfluous, or achieve[s] a weird and whimsical result" is not allowed. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991) (quoting *Arizona v. United States*, 575 F.2d 855, 863 (Ct. Cl. 1978)). "If a contract term is unambiguous, the court cannot assign it another meaning, no matter how reasonable it may appear. See *Triax Pacific, Inc. v. West*, 130 F.3d 1469, 1473 (Fed. Cir. 1997)."

## 5. CASE MANAGEMENT ARGUMENT

The courts and tribunals inaccurately state case overload exists. E24 E29 USCAFC implements Federal Rules of Appellate Procedure (F.R.A.P.) Rule 34 by automatically denying a specific class of P. L. 95-563 amended (CDA) contractors appellate level hearings and oral argument. E2 This Supreme Court formed the basis for that class segregation in FCC V. WJR, The Goodwill Station, Inc., 337 U. S. 265, 274 -77 (1949). F.R.A.P. Rule 34(a) E2 evolved in part:

> "Rule 34. Oral Argument (a) In General. .... (2) Standards. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary ...."

Former Chief Judge Paul L. Michaels explains the evolution of USCAFC hearing E29 screening in his American University Washington College of Law Volume 48, Number 6 August 1999 The Court of Appeals for the Federal Circuit Must Evolve to Meet the Challenges Ahead and concludes the USCAFC FCIA "Great Experiment" in Volume 59, Number 4 April 2010 Past, Present, and Future in the Life of the U.S. Court of Appeals for the Federal Circuit.

Initially the process involved a three judge panel. USCAFC now screens for Rule 34 Hearing and Oral Argument E2 E29 by an evaluation committee E24 consisting of the clerk, senior technical assistant, and two deputy technical assistants "For the Court".

In Rule 34 violation E2 USCAFC hearing panel judges never receive or review self-litigant small business contractor filed briefs. For that class, USCAFC hearing panel judges only receive law clerk summary memoranda and draft opinions for review.

## 6. CIRCUIT SPLIT

ASBCA and USCOFC know the existence of small business self-litigant appellate level hearing and oral argument E29 automatic denial. That fact enables those tribunals to remove disputed material facts, substitute the nature of a CDA non-monetary dispute cases into monetary cases not claimed, and change the CDA CO of Record by issuing declaratory judgments not authorized by Congress. E25

The U.S. District Court Southern District San Diego reviewed the four corners of Contract FA8621-04-D-6250 and found competing contract E6 delivery order officer Betty W. Clingerman E3 is not party to this contract. E7 & E11 Clingerman did not appeal.

ASBCA issued a declaratory judgment competing contract delivery order officer Clingerman had issued "letters" to this contractor and therefore was the CO of Record by "self assignment" "implied consent". ASBCA did confirm UAV-MTT-001 through UAV-MTT-008 are GFE to this contractor until closeout.

The U.S. District Court of Nevada reviewed the ASBCA declaratory judgment, issued a court order, and closed the case without an appealable final judgment. The 9th Circuit confirmed that court order was not actionable and not appealable. See A17 P. 77

Clingerman confirmed by signed statement authenticated by the ASBCA Recorder the Nevada case was a CDA § 6(b) false claim not based on § 6(a):

> "AF letter dated 12 Feb 07 is a [competing contract] CO demand letter to return government property; it is not a CO final decision nor is it a decision on a claim; therefore all references to 48 C.F.R. are not applicable." See A18 P. 78.

Thereby, the CDA § 6(b) case jurisdiction is void.

## ARTICLE III DECLARATORY JUDGMENT

Article III Court Declaratory judgments are considered a type of preventive justice. By informing parties of their rights, they help avoid violating specific laws or the terms of a contract. Congress enacted 28 U.S.C. § 2201 et seq. which allows for declaratory judgments concerning federal law issues.

Declaratory judgment actions came into being out of the need to allow parties to adjudicate actual controversies without their dispute reaching a point where a coercive remedy was required. See generally, Charles Alan Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 2751 (3d ed. 2005).

As explained by Congress, the purpose of the Declaratory Judgment Act was to "enable parties in disputes over their rights over a contract, deed, lease, will, or any other written instrument to sue for a declaration of rights, without breach of the contract ...." S. Rep. No. 1005, 73rd Cong. 2d Sess. (1934).

To satisfy the Article III requirement, a party must show that: (i) it suffered an "injury in fact" which is "concrete and particularized" and "actual and imminent, not conjectural or hypothetical;" (ii) that there is a "causal connection between the injury and the conduct complained of;" and (iii) that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." See *Bennett v. Spear*, 520 U.S. 154, 167 (1997).

The question is whether the facts alleged under all the circumstances show that there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant a declaratory judgment.

## ARTICLE I NON-MONETARY RESOLUTION

P. L. 95-563 amended Article I Tribunal Non-Monetary Dispute resolutions are limited to the four corners of the written contract, P.L. 95-563 amended and 48 C.F.R. As confirmed by USCOFC and USCAFC, ASBCA and USCOFC do not have Article III Declaratory Judgment authority when Tucker Act and CDA jurisdiction are satisfied. In 1992 nonmonetary dispute resolution was added to USCOFC [ASBCA] voiding significant case policy. [E26]

P. L. 102–572 106 Stat. 4516, 4519, § 907(b)(1) Oct. 29, 1992 amended 28 U.S.C. § 1491 Subsection (a)(2): "by inserting before period at end ", including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act"".

P. L. 104–320 110 Stat. 3874 Oct. 19, 1996 § 12(a)(3) limited USCOFC declaratory judgment authority to bid protests by striking out 28 U.S.C. § 1491 Subsection (a)(3) and by inserting after subsection (a), the following new subsection (b): where (b)(2) reads: "To afford relief in such an action [bid protests], the courts may award any relief that the court considers proper, including declaratory and injunctive relief except that any monetary relief shall be limited to bid preparation and proposal costs."

Statutory 1978 ASBCA/USCOFC were provided equal CDA jurisdiction limited to the contractor's claim as presented to the 48 C.F.R. § 4.101 CO of Record on which a decision [or deemed denial] of the CO has been issued under § 6 of that Act". They do not have CDA declaratory judgment authority.

## SUMMARY OF FACTS

There is one plain language law and one plain language regulation presented for non-monetary dispute judicial review in ASBCA and USCAFC:

- P. L. 95-563 92 STAT 2384 § 6 DECISION BY THE CONTRACTING OFFICER;
- 48 C.F.R. § 4.101 defines THE CONTRACTING OFFICER is Michael L. Grove [E4]
- Congressional Breach is based on P. L. 109–364 120 STAT. 2331 §832 17OCT2006 and *Franconia Associates, et al., v. U.S.*, 536 U.S. 129 (2002);
- The ASBCA 56742 Non-Monetary Dispute Claim Request limits ASBCA and USCOFC jurisdiction;
- All matters of law and fact herein were provided in the briefs submitted to ASBCA/USCAFC panels;
- Hearings [E29] were denied in both tribunals to validate the briefs were physically received by and physically reviewed by ASBCA/USCAFC panels;
- 48 C.F.R. § 1.601 provides Clingerman is not an USAF/AFMC/ASC issued CO and is not the 48 C.F.R. § 4.101 CO of Record for this contract;
- Congress does not provide ASBCA and USCAFC declaratory judgment to declare Clingerman: has ASC CO issued authority; was HCA assigned to this contract; is the CO for this contract; and has an "ALL USAF" SF1402 created by blanking the SES/DCS agency SF1402 organization field; [E3] [E6]
- Congress provides Non-Monetary Dispute (NMD) jurisdiction and limits ASBCA, USCOFC, and USCAFC jurisdictions to the subject matter within the contractor's NMD request for a final decision;
- No non-monetary de-novo review was provided.

## SUMMARY OF LAW

The legislative histories of both the CDA and the FCIA make it clear that boards were not given declaratory judgment authority. Moreover, the procurement community generally seemed disinclined to request that such power be granted to the boards. However, the definition of a claim contained in the standard disputes clause concerning the "adjustment or interpretation of contract terms or other relief" arising under or relating to a contract presents possibilities for boards to award declaratory type relief without monetary claims being filed. [E28]

28 U.S.C. § 1491 (a) (2) provides in part:

> "In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act."

Michael L. Grove is the CDA § 6 CO of Record. He received and answered ASBCA 56742 and 56928 non-monetary disputes. There is no written document within the contract's four corners that provides for the unauthorized ASBCA declaratory judgment Betty W. Clingerman is the CDA § 6 CO.

## CONCLUSION

Congress has procedures that enable it to acquire information to keep a critical eye on those who administer the laws it enacts and who spend the money it appropriates. Therein, this investigation was started in 2006 on recommendation by the Department of Justice Attorney General San Diego.

This investigation is to determine if the FCIA "Great Experiment" works for small business self litigant contractors. This investigation is based on P. L. 95-563 amended (CDA) 92 Stat. 2384 § 6(a) DECISION BY THE CONTRACTING OFFICER, 48 C.F.R. § 4.101 definition of THE CONTRACTING OFFICER, and amended CDA § 6(d)-(e) Alternative Dispute Resolution. This phase of the investigation ends with filing this petition for a writ of certiorari. At this time, all administrative opportunities to close Contract FA8621-04-D-6250 have been exhausted.

The business of Congress is not to govern the country, but rather to see to it that those who do govern perform their functions properly. Congress has the power to investigate. The ASBCA 56742 and 56928 opinions and the USCAFC "For the Court" PCA are in violation of P. L. 95-563 amended (CDA) § 6 and 48 C.F.R. § 4.101. The opinions exclusively:

- Interpret the Notice of Appeal (NOA) to provide subject matter jurisdiction and exclude the CDA § 6(a) contractor claim requests and CO answers;
- Reference letters from the competing contract delivery order officer as the source for their CDA jurisdiction by issuing declaratory judgments to change the Contracting Officer and change the non-monetary disputes to monetary claims: declaratory judgments that are not authorized by Congress.

Contractors always know who the 48 C.F.R. § 4.101 Contracting Officer (CO) of Record is by that person's name typed and signed on the contract or by an SF30 contract modification with Block 14 Intent to change the Contracting Officer (CO) of Record. The person named as a Contracting Officer (CO) in the ASBCA 56742/56928 opinions and USCAFC "For the Court" PCA is not an AFMC/ASC CO and is not the Contracting Officer for FA8621-04-D-6250. [E3] This contractor declines to violate plain language law and regulations cited herein by that coercion:

> "For the specific intent required by [that a]ct is [an] intent to deprive [this contractor] of a right[s] which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them."

See *Screws v. U.S.*, 325 U.S. 91 (1945). This four year six court Congressional investigation to determine if the FCIA "Great Experiment" works for small business self litigant contractors is now administratively completed. That class of contractor litigants is unconstitutionally prohibited by the U.S. Court of Appeals for the Federal Circuit from hearings, oral arguments, and Alternative Dispute Resolution through internal operating procedures.

Affirmed this 12AUG2010 Guy W. Parker
by /s/ Guy W. Parker
14924 Conchos Dr. Poway, CA 92064 858-486-6469

Affirmed this12AUG2010 Alan C. Gaudette
by /s/ Alan C. Gaudette
16241 W. Hearthstone Dr. Surprise, Arizona 85374

State of Arizona County of Maricopa
Subscribed and sworn before me on Aug. 12, 2010 (Date)
(Notary Signature)

OFFICIAL SEAL
DANIEL HERNANDEZ
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires October 05, 2012

## PROPOSED SUPREME COURT PER CURIAM

PARKER, PETITIONER v.
UNITED STATES AIR FORCE, et al.
ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

The Contracting Officer of Record for Contract FA8621-04-D-6250 is 48 C.F.R. § 4.101 Contracting Officer Michael L. Grove whose name appears typed and signed on that contract. The contract issuing organization ASC/YW was decommissioned and dismantled in 2005. Michael L. Grove was moved to HQ AFMC/PKPB in 2005. No written SF30 bilateral ratification or SF30 bilateral agreement for unilateral ratification of a new P. L. 95-563 amended § 6 Contracting Officer and for a new contract organization exists. Congress terminated funds for this Military Flight Simulator Service Contract on 17OCT2006. Michael L. Grove was unable to request the Congressional Waiver. This contract was effectively terminated for convenience by Congress.

The 2010-1153 PCA judgment of the U.S. Court of Appeals for the Federal Circuit, ASBCA 56742, and the ASBCA 56928 case based on the unauthorized declaratory judgment change of contracting officer and not based on the CDA § 6 Claims are vacated. This case is remanded to the U.S. Court of Appeals for the Federal Circuit with instructions to remand to the Armed Services Board of Contract Appeals with instructions to remand to DCMA to appoint a Terminating Contracting Officer for Termination for Convenience contract closeout proceedings consistent with 48 C.F.R. Subpart 49.1 General Principles and consistent this opinion. It is so ordered.

## ENDNOTES

**E1** – 41 U.S.C. §§ 601-613 is not positive law.

**E2** – USCAFC 2010-1153: A USCAFC law clerk's written synopsis introduced bias and prejudice and was summarily approved by the clerk "For the Court".
The appeal's brief, response, and reply were never seen, read, reviewed, or submitted to the USCAFC Appeal Panel. A Rule 34 hearing request was denied without the briefs submitted to or reviewed by the panel. See A10 P. 70.

**E3** –Clingerman is not an AFMC/ASC Certified Contracting Officer. Clingerman refused to provide a SF1402 COA outside of litigation and in litigation in the U.S. District Court San Diego in violation of 48 C.F.R. 1.602-1. See A11 P. 71 and A12 P. 72.

In 2008, Clingerman first provided an invalid decommissioned 1982 ASPR ASD COA. Clingerman recanted that ASD COA six months later providing a 1992 SES/DCS SF1402 with the organization blank in violation of 48 C.F.R. § 1.601: A4 P. 60 That SF1402 COA was invalid because its organization is blank and fails the 1992 FAR requirements of 10 years of actual CO experience before NOV1991. Without authority ASBCA declared an "ALL USAF" SF1402 exists and declared Clingerman this contract's CO.

**E4** –FA8621-04-D-6250 SF26 Contract Page 1: See A2 P. 45

**E5** – Example SF30 with Block 14 Change of Contract Officer See A3 on P. 60. AFLOA/USDOJ: unable to cite AFMCFAR or DFAR regulation amplification.

**E6** – See Clingerman's SF1402 SES/DCS 1992 SF1402 COA on A4 P. 60-61. See F33657-01-D-2077 0007 competing contract delivery order SF1115 A5 on P. 62.

**E7** – ASBCA 56742 Non-Monetary Dispute Claim request and 48 C.F.R. § 4.101 answer. See A6 P. 63 and A7 P. 64 P. L. 95-563 amended and 48 C.F.R. do not prohibit a contractor from combining a non-routine invoice with a 28 U.S.C. § 1492 (a) (2) Non-Monetary Dispute claim. The on-going live non-monetary dispute provided to the 48 C.F.R. § 4.101 CO of Record Michael L. Grove appends an invoice asserting the invoice is a reason for the action and does not assert the invoice is the cause of action.

**E8** – 48 C.F.R. § 4.101 Contract Officer of Record Answer 02FEB2009. See A7 P. 64

**E9** – Congressional breach occurs when the performance period ends and the act has not been amended: *Franconia Associates, et al., v. U.S.*, 536 U.S. 129 (2002)

**E10** – P. L. 95-563 amended § 6 (d) (e). See A9 P. 69

**E11** – 48 C.F.R. § 1.6, § 4.1, § 33.2 Clauses: A8 P. 65-67

**E12** – FA862104D6250 Clauses H101-H103 A13 P. 73

**E13** – As amended in 1992, the Tucker Act gives the Court of Federal Claims jurisdiction "to render judgment upon .... other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of the [CDA]." 28 U.S.C. § 1491(a)(2)

**E14** – P. L. 95-563 92 STAT. 2384 § 6 (A). A14 P. 74

**E15** – GAO Report GAO-06- 830 Service Contract Approach to Aircraft Simulator Training Sept 2006 http://www.gao.gov/new.items/d06830.pdf.

**E16** – The Tucker Act as amended in 1992 authorizes USCOFC/ASBCA to resolve various "nonmonetary disputes" arising under the Contract Disputes Act mandatory by contractor request without discretion and without declaratory judgment. [17] [18]

**E17** – P. L. No. 102-573, Title IX, §§902(a), 907(b)(1), 106 Stat. 4516 (1992) (codified at 28 U.S.C. §1491(a)(2))

**E18** – Pub. L. No. 104-320, §12, 110 Stat. 3870.3874-76 (1996) (codified at 28 U.S.C. §1491(b)).

**E19** – 28 U.S.C. Chapter 151 Declaratory Judgments § 2201: (a) In a case of actual controversy within its jurisdiction, except ...., any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

**E20** – USCOFC No. 07-324C 12092008
http://www.uscfc.uscourts.gov/sites/default/files/GMiller.Todd120908.pdf

USCOFC No. 07-324C 07222009
http://www.uscfc.uscourts.gov/sites/default/files/GMiller.Todd072209.pdf

**E21** – 48 C.F.R. § 4.101 is shown in A8 on P. 66.

**E22** – ASBCA Rule 10 Hearing Denial A15-A16 P. 75-76.

**E23** – USCOFC No. 99-350C 05312000
http://www.uscfc.uscourts.gov/sites/default/files/GPA.pdf

**E24** – In accord with 28 U.S.C. § 620(a) The Federal Judiciary documented how camera stellata is implemented into the policy of the Federal Circuit.

http://ftp.resource.org/courts.gov/fjc/caseman1.pdf or http://www.fjc.gov/public/pdf.nsf/lookup/caseman1.pdf/$file/caseman1.pdf.

**Judge Fern Smith**
**Director, Federal Judicial Center**
*Case Management Procedures*
*in the Federal Courts of Appeals*
**U. S. Court of Appeals for the Federal Circuit**

"The court staff does not screen cases for argument or nonargument disposition. All counseled cases are automatically scheduled for oral argument, and all pro se cases are automatically set for submission without argument." "The result is usually announced in an unpublished per curiam judgment and memorandum."

**E25** – Senate Report No. 95-1118 Congressional Record Vol. 124 (1978) P. 5243-4 Marked P. 9-10:

"Since it is the contractor who is bringing a claim against the Government, the committees believe it would be incongruous to allow the Government, who is not the aggrieved party in the case, to set the procedures under which the claim would be heard."

"[CDA] allows the contractor a de novo trial in the appellate court upon receiving a negative decision."

**E26** – 28 U.S.C. 1491 Notes: Amendments: 1996 / 1992 http://www.law.cornell.edu/uscode/html/uscode28/usc_sec_28_00001491----000-notes.html

**E27 – See** A20 P. 83: USCAFC 2010-1153 MANDATE 02AUG2010

**E28** – The Army Lawyer Department of the Army Pamphlet 27-50-153 September 1985 Pages 11- 14 found at http://www.loc.gov/rr/frd/Military_Law/pdf/09-1985.pdf provides an exhaustive history regarding non-monetary dispute relief in the boards and USCOFC. That document provides why ASBCA and USCOFC are not provided declaratory judgment except for USCOFC in bid protests:

"The Federal Courts Improvement Act of 1982 (FCIA) 23 expanded the authority of the Claims Court (former Court of Claims Trial Division) with regard to declaratory judgments. The FCIA vested the Claims Court with the authority to "afford complete relief on any contract claim brought before the contract is awarded, [and] the Court shall have exclusive jurisdiction to grant declaratory judgment and such equitable and extraordinary relief as it deems proper."

"The legislative history of the FCIA states that because the Claims Court is granted exclusive jurisdiction concerning pre-award [bid protest] declaratory relief, boards would not possess comparable authority pursuant to section 607(d) of the CDA. S. Rep. No. 275, 97th Cong.. 1st Sess. 22-23 (1981)."

Congress limits declaratory judgment jurisdiction to USCOFC and restricts that declaratory judgment jurisdiction to bid protest cases.

"The legislative histories of both the CDA and the FCIA make it clear that boards were not given declaratory judgment authority."

**E29** – Hearings Defined and USCAFC Caseload Analysis

A hearing is a proceeding where evidence is taken for the purpose of determining an issue of fact and reaching a decision based on that evidence with an opportunity to state the case within which the voices of both parties can be heard. In the United States decisions must be preceded by a hearing. An important step in this development was the Supreme Court decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970) that illustrates what constitutes a "hearing". See Lorch, Robert (1980). Democratic Process and Administrative Law, Wayne State University Press, ISBN 0814315135.

The United States Court of Appeals for the Federal Circuit (USCAFC) provides caseload statistics at: http://www.cafc.uscourts.gov/index.php?option=com_content&view=article&id=145&Itemid=28. The USCAFC Statistics Historical Caseload shows that FY2009 had 1,367 cases. That FY2009 caseload is lower than FY1989: http://www.cafc.uscourts.gov/images/stories/the-court/statistics/HistCaseloadOverall83-09LineChart.pdf. Statistics Appeals Filed by Category shows of 1,367 cases only 5% involved contract disputes, about 67 cases for FY2009: http://www.cafc.uscourts.gov/images/stories/the-court/statistics/ChartFilings09.pdf. Statistics Caseload Analysis FY 2008-09 shows there were 25 USCAFC cases filed from the Board of Contracts Appeals, 13 cases were decided by the Rule 34 Merit Panels and 12 cases were decided by Rule 34 violation law clerk summary memorandums without the requested hearings to confirm the USCAFC panel received and reviewed the filed briefs: http://www.cafc.uscourts.gov/images/stories/the-court/statistics/CaseloadAnalysisFY09.pdf. For each of the five three USCAFC judge panels about 10% of their time is consumed in hearings. No caseload overload problem exists that requires Rule 34 class violations.

**E30** – FA8621-04-D-6250 Sole Source J&A See A21 P. 84
FA8621-04-D-6250 Solicitation See A22 P. 85

## APPENDIX

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The Office of the Clerk letter 17AUG2010 requested Appendix 8.5" x 11" photo documents found within the ASBCA 56742 Government Rule 4(a) Appeal File http://www.welaw.org/US/Rule_4B_File.pdf and the ASBCA 56742 Contractor Rule 4(b) Appeal File http://www.welaw.org/US/Rule_4B_File.pdf be text replaced. The Appendix 8.5" x 11" documents photos and the full set of contract documents is accessible at http://www.welaw.org/US/index.html.

**A1A: USCAFC 2010-1153 OPINION 09JUN2010**

http://www.cafc.uscourts.gov/opinions/10-1153.pdf

NOTE: This disposition is nonprecedential. United States Court of Appeals for the Federal Circuit

GUY W. PARKER (DOING BUSINESS AS PARKER INTERNATIONAL), Appellant,

v.

MICHAEL B. DONLEY, SECRETARY OF THE AIR FORCE, Appellee.

2010-1153

Appeal from the Armed Service Board of Contract Appeals in No. 56742, Administrative Judge Monroe E. Freeman, Jr.

Decided: June 9, 2009

GUY W. PARKER, of Poway, California, pro se.

MATTHEW H. SOLOMSON, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, for appellee. With him on the brief were TONY WEST, Assistant Attorney General, JEANNE E. DAVIDSON, Director, and KIRK T. MANHARDT, Assistant Director.

Before BRYSON, SCHALL, and GAJARSA, Circuit Judges.

PER CURIAM.

This is an appeal of a government contract case from the Armed Service Board of Contract Appeals ("Board"). Guy W. Parker appealed the denial of two claims for payment of invoices for services provided pursuant to a contract with the government. The Board dismissed Mr. Parker's appeal for lack of jurisdiction. Guy W. Parker dba Parker International, ASBCA No. 56,742, 09-2 B.C.A. P 34,260 (2009). Mr. Parker appeals to this court from that decision. At issue is whether the Board correctly dismissed Mr. Parker's case because the appeal of one of Mr. Parker's claims was untimely and because Mr. Parker failed to request and obtain a final decision by a contracting officer on his other claim pursuant to the Contract Disputes Act ("CDA"). 41 U.S.C. §§ 601--13. For the reasons explained below, we affirm the decision of the Board.

BACKGROUND

On March 22, 2004, the United States Air Force ("Air Force") entered into Contract No. FA8621-04-D-6250 ("the Contract") with Mr. Parker. Under the terms of the Contract, Mr. Parker was to provide a software use license, software enhancements, and other supporting services to the USAF for the Predator MQ-1 Unmanned Aerial Vehicle Multi-Task Trainer ("PMTT"). The Contract could have been renewed for up to four additional one-year periods through the issuance of annual delivery orders by the contracting officer.

On February 15, 2006, contracting officer Betty W. Clingerman informed Mr. Parker that the Air Force would not be placing any additional delivery orders under the Contract following calendar year 2006. Ms.

Clingerman further cautioned Mr. Parker "not to do any work outside the scope of the current Delivery Order, D004." In subsequent correspondence, Mr. Parker was informed that any issue relating to his contract should be addressed to contracting officer Clingerman.

On May 2, 2007, Mr. Parker submitted a certified claim for payment of Invoice SER 0805 to contracting officer Michael Grove and to two administrative contracting officers ("ACOs") at the Defense Contract Management Agency ("DCMA"), allegedly for service rendered to update a version of the PMTT software installed at two Air Force bases for the period of April 1 to December 22, 2006. On June 27, 2007, Ms. Clingerman, the contracting officer assigned to the Contract, rendered a final decision denying the certified claim in full on the ground that the upgrade was not part of the current delivery order and advising Mr. Parker that he could either appeal to the Board within 90 days of his receipt of the final decision or bring an action directly in the United States Court of Federal Claims within 12 months of his receipt of the final decision. Although Mr. Parker received that final decision on June 30, 2007, he did not file his notice of appeal to the Board until February 6, 2009.

On January 19, 2009, Mr. Parker forwarded a Certified Claim and Invoice SER 9-11 to various contracting officers at the Defense Finance Accounting Service and DCMA, but not to Ms. Clingerman. In that invoice, Mr. Parker sought payment of a total of $1,518,000, allegedly for "use of the [PMTT]" for calendar years 2007 and 2008. On January 26, 2009, an administrative contracting

officer rejected Invoice SER 9-11. The ACO's rejection letter did not state that it was a final decision.

On February 6, 2009, Mr. Parker submitted a notice of appeal to the Board, primarily challenging the denial of certified claims relating to Invoice SER 0805 and Invoice SER 9-11, but also pursuing a variety of other nonmonetary "[r]equest[s]."

With respect to Mr. Parker's appeal relating to Invoice SER 0805, the Board, sua sponte, ordered Mr. Parker to show cause why his appeal should not be dismissed as untimely. After considering Mr. Parker's submissions to the Board in response to the show cause order, the Board found that "[t]here is no evidence of timely appeal of the [final decision] by [Mr.] Parker either to this Board or to the Court of Federal Claims."

With respect to Invoice SER 9-11, the Board found that the SER 9-11 invoice "did not expressly refer to the CDA or the Disputes clause of the Contract, or use the word 'claim,' or request a contracting officer's final decision on the invoice . . . ." Accordingly, the Board dismissed Mr. Parker's appeal for lack of jurisdiction on September 21, 2009. In doing so, the Board also concluded that Mr. Parker's other "[r]equest[s]" likewise were not submitted to the contracting officer as part of any CDA claim. This appeal followed.

DISCUSSION

We review decisions of the Board on questions of law de novo. 41 U.S.C. § 609(b); Randa/Madison Joint Venture III v. Dahlberg, 239 F.3d 1264, 1269 (Fed. Cir. 2001). Whether or not the Board had jurisdiction is a question of law. Transamerica Ins.

Corp. v. United States, 973 F.2d 1572, 1576 (Fed. Cir. 1992). The Board's decisions on questions of fact are deemed final, unless found to be arbitrary, capricious, fraudulent, so grossly erroneous as to suggest bad faith, or unsupported by substantial evidence. 41 U.S.C. § 609(b); 239 F.3d at 1269.

With respect to Invoice SER 0805, Mr. Parker's appeal was untimely. Section 606 of the CDA authorizes a contractor to appeal the final decision of a contracting officer to an agency board of contract appeals within 90 days of the contractor's receipt of the decision. 41 U.S.C. § 606. Mr. Parker does not appear to challenge the Board's finding that his claim relating to Invoice SER 0805 was denied in a final decision of contracting officer Clingerman on June 27, 2007 and that there is no evidence of a timely appeal being filed by Mr. Parker either to the Board or to the Court of Federal Claims. Rather, Mr. Parker appears to dispute Ms. Clingerman's authority as a contracting officer. The Board found that "argument is without merit," since the record clearly indicates that Ms. Clingerman has been a duly appointed contracting officer and has performed contracting officer duties on Contract 6250 since 2005. Accordingly, the Board prop-erly dismissed Mr. Parker's appeal as time-barred. See, e.g., Renda Marine, Inc. v. United States, 509 F.3d 1372, 1380-81 (Fed. Cir. 2007); Cosmic Constr. Co. v. United States, 697 F.2d 1389, 1391 (Fed. Cir. 1982) (upholding dismissal of an appeal filed outside of the 90-day statutory period for appealing a final decision to a board of contract appeals).

With respect to Invoice SER 9-11, Mr. Parker did not submit a CDA claim to the contracting officer for

payment of that invoice prior to the filing of his appeal. The CDA sets forth a detailed process that a contractor must follow prior to either filing an appeal with the Board or initiating suit in the Court of Federal Claims. See 41 U.S.C. §§ 605(a)-(c). In particular, "[a]ll claims by a contractor against the government relating to contract shall be in writing and shall be submitted to the contracting officer for a decision." 41 U.S.C. § 605(a). As the Board noted, Invoice SER 9-11 did not include an express request for the contracting officer's final decision under the CDA. The Board further found that Mr. Parker deliberately avoided submitting the invoice to the correct contracting officer, Ms. Clingerman. In any event, Invoice SER 9-11 cannot be considered a proper CDA "claim" because an invoice is a classic example of a submission that, standing alone, cannot constitute a CDA claim. See, e.g., James M. Ellett Const. Co., Inc. v. United States, 93 F.3d 1537, 1542 (Fed. Cir. 1996); Reflectone, Inc. v. Dalton, 60 F.3d 1572, 1577-78 (Fed. Cir. 1995) (en banc); Federal Acquisition Regulation 2.101 (providing that an "invoice, or other routine request for payment that is not in dispute when submitted is not a claim").

Therefore, we affirm the decision of the Board dismissing the claims for lack of jurisdiction because the Board correctly dismissed Mr. Parker's appeal relating to Invoice SER 0805 as untimely and the Board also correctly dismissed Mr. Parker's appeal relating to Invoice SER 9-11 on the ground that Mr. Parker failed to submit a CDA claim to the contracting officer seeking a final decision for that invoice's payment.

No costs.

AFFIRMED [UNSIGNED "FOR THE COURT"]
**A1B: ASBCA 56742 OPINION / DECISION**
http://www.asbca.mil/Decisions/2009/56742.pdf

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of Guy W. Parker d/b/a Parker International

ASBCA No. 56742

Under Contract No. FA8621-04-D-6250

APPEARANCE FOR THE APPELLANT: Mr. Guy W. Parker

APPEARANCES FOR THE GOVERNMENT: Richard L. Hanson, Esq. Air Force Chief Trial Attorney Lt Col Michael J. Farr, USAFR Of Counsel Maj Jonathan P. Widmann, USAF Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE FREEMAN ON THE GOVERNMENT'S MOTION TO DISMISS

Guy W. Parker d/b/a Parker International (Parker) appeals the denial of two claims for payment of invoices (Notice of Appeal at i). The government moves to dismiss the appeal as to one of the claims. The Board, sua sponte, has noted probable lack of jurisdiction over the appeal as to the other claim, and has ordered Parker to show cause why the appeal should not be dismissed as to that claim as well. Parker has not shown cause, and for the reasons stated below we dismiss the appeal entirely.

STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

1. Effective 22 March 2004, Parker was awarded the captioned contract (hereinafter Contract 6250) to provide as ordered on an annual calendar year basis a software use license, software enhancements and supporting services for the Predator MQ-1 Unmanned Aerial Vehicle Multi-Task Trainer (PMTT) (R4, tab 1 at 1-2, 7). The Contract 6250 Statement of Work (SOW) stated, among other things, that: "The basic effort covers one year of MTT operation and maintenance, and can be renewed for up to four additional one-year periods through the issuance of annual delivery orders by the contracting officer." (R4, tab 1, attach. 1 at 2) The "total estimated aggregate dollar amount" of the contract base year and four renewal years was $3,000,000 (R4, tab 1 at 8).

2. Contract 6250 included, among other provisions, the FAR 52.216-22 INDEFINITE QUANTITY (OCT 1995) clause, the FAR 52.233-01 DISPUTES (JUL 2002) clause, the FAR 52.243-01 CHANGES – FIXED-PRICE (AUG 1987), Alternate III (APR 1984) clause, and an H103 ORDERING PROCEDURES (DEC 2003) clause. The Ordering Procedures clause stated in relevant part:

> (a) Performance can be authorized under this contract only by the issuance of individual orders signed by an ASC/YW [Aeronautical Systems Center/Training Systems Product Group] Procuring Contracting Officer (PCO)....

....

> (c) A total Price shall be established for each order. If the Contractor exceeds this fixed price, it is at his own risk. Any changes to the price will be issued in writing, will set forth any additional obligation to b[e] incurred by the Government, and shall be signed by the PCO in advance of the Contractor exceeding the price. (R4, tab 1 at 9, 11, 12)

3. Contract 6250 was issued by the Air Force Material Command (AFMC) Aeronautical Systems Center (ASC). The contracting officer (CO) making the award was Michael L. Grove. (R4, tab 1 at 1) CO Grove also issued Delivery Order No. 0001 under the contract for the PMTT software use license and contractor support services for calendar year 2004 at a firm fixed price of $300,000 (app. supp. R4, tab 42 at 1-2). [1] In October 2004, CO Grove left ASC/YW, and thereafter did not hold a CO's warrant (*id.*, tab 1).

[1] Appellant's submission for the Rule 4 file designates each submitted document as "exhibit." Consistent with our usual practice for the R4 file, we will designate each of these documents as "tab."

4. Delivery Order No. 0002 was issued on 13 January 2005 by CO Norma J. Weikert for the PMTT software use license and contractor support services for calendar year 2005 in the total amount of $313,200 (app. supp. R4, tab 43 at 1-2). Delivery Order No. 0003 was issued on 15 September 2005 by CO Betty W. Clingerman for an upgrade to the PMTT software use license and additional contractor support services for calendar year 2005 in the total amount of $200,000 (app. supp. R4, tab 44 at 1-2).

5. CO Clingerman's original Certificate of Appointment as a Contracting Officer for the Air Force was issued in 1982. That certificate was terminated and replaced by a new certificate effective 1 July 1992 and remains in effect to date. CO Clingerman's 1 July 1992 Certificate of Appointment contains no special limitations on her authority and is effective as long as she is assigned to the United States Air Force. (App. supp. R4, tabs 132, 133) Pursuant to 10 U.S.C. § 1724(c)(2), the contracting officer qualification requirements in 10 U.S.C § 1724(a) and (b) do not apply to CO Clingerman.

6. Effective 8 November 2005, the government and Parker entered into bilateral Modification No. P00001 to Contract 6250 updating the government furnished equipment attachment to the contract at no change in contract price. Mr. Parker signed this modification for himself and CO Clingerman signed for the government. (App. supp. R4, tab 45)

7. Effective 27 January 2006, CO Clingerman issued Delivery Order No. 0004 under Contract 6250 for the PMTT software use license and contractor support services through 31 December 2006 at a firm fixed price of $549,000. Mr. Parker signed a written acceptance of Delivery Order No. 0004 on 26 January 2006. The written acceptance stated that the contractor accepted the order "subject to all of the terms and conditions set forth, and agrees to perform the same." (R4, tab 2)

8. On 15 February 2006, CO Clingerman sent Parker a letter that stated in relevant part:

> SUBJECT: Contract FA8621-04-D-6250, CY06 Last Year for Site License...
>
> 1. This is to notify you that CY06 is the last year that the government intends to purchase a site license under subject contract. You are therefore cautioned not to do any work outside the scope of the current Delivery Order, D004.

(R4, tab 5)

9. On 18 April 2006, CO Clingerman sent Parker the minutes of a 29 March 2006 meeting at which, among things, a PMTT software upgrade developed by Parker without government direction or participation was discussed. The upgrade was referred to as the Rev 8 Block Upgrade. The forwarding letter stated in relevant part:

> [The minutes] are provided to highlight that PMTT Rev 8 Block Upgrade can remain on system for contractor test and integration but

> cannot be used for training until it's part of current site license. The government does not intend to issue an RFP for the PMTT Revision 8 block Upgrade. In our letter dated 15 Feb 06, you were notified by the government that "CY 06 is the last year that the government intends to purchase a site license per subject contract." In that letter you were "cautioned not to do any work outside the scope of the current Delivery Order, D004."

(R4, tab 6) CO Clingerman also advised Parker that "[a]ny contractual questions may be address[ed] to the undersigned" (*id.*).

10. On 20 October 2006, Parker submitted its invoice SER 0805 in the amount of $341,550 to the Administrative Contracting Officer (ACO) for a site license for the period 1 April through 22 December 2006 for an upgraded version (OFP 3.6D) of its PMTT software. Parker allegedly installed the upgraded version at two Air Force bases. (R4, tab 10 at 4)

11. In accordance with CO Clingerman's letter of 15 February 2006, the government did not issue delivery orders under Contract 6250 for calendar years 2007 and 2008.

12. On 2 May 2007, Parker submitted a certified claim for payment of its invoice SER 0805. The claim letter was addressed to the attention of "PCO Michael Grove" at AFMC Headquarters and two ACOs at the Defense Contract Management Agency Dayton. The claim was certified in the form required by the Contract Disputes Act of 1978 (CDA), 41 U.S.C. § 605, and expressly requested a contracting officer's decision on the claim. (R4, tab 10 at 1, 6)

13. On 27 June 2007, CO Clingerman issued a contracting officer's final decision (COFD) denying Parker's claim for payment of invoice SER 0805 in its entirety (R4, tab 11). The COFD was received by Parker on 30 June 2007. The COFD advised Parker of its right to appeal the decision to this Board within 90 days of receipt, or in the alternative to the United States Court of Federal Claims within 12 months of receipt of the decision. (Id.) There is no evidence of a timely appeal of the COFD by Parker either to this Board or to the Court of Federal Claims.

14. On 19 January 2009, Parker sent a letter with an attached invoice to DFAS (the Defense Finance Accounting Service) and DCMA (the Defense Contract Management Agency) to the attention of ACOs (Administrative Contracting Officers) Schlatter and Johnson and "CO Michael L Grove." The forwarding letter stated in relevant part:

> The eight Predator Training Systems has [sic] been received at Creech AFB, Nellis AFB and Luke AFB. The use of the systems has been paid for CY2004, CY2005, and CY2006. There is a balance for CY2007 and CY2008 of

> $1,518,000.00 for this Firm Fixed Price Order due....
> I, Guy W. Parker, certify that this invoice SER 9-11 is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify this invoice on behalf of the contractor. Invoice SER 805 remains unpaid, is not included in this invoice accounting certification data, and shall not be construed as a double invoice entry. Betty W. Clingerman is not a party to this contract as evidenced in the attached United States District Court Southern District of California Court Order.

(Notice of Appeal, ex. 14 at 1[2])

15. The SER 9-11 invoice attached to the 19 January 2009 forwarding letter had the same date as the forwarding letter and was addressed to DFAS-CO/NORTH ENTITLEMENT OPER to the attention of ACO Schlatter. The invoice was in the same amount with the same alleged basis as stated in the forwarding letter (Notice of Appeal, ex. 14 at 2).

[2] In Parker v. Clingerman, No. 08cv212L (WMc) (S.D. Cal. March 13, 2008), the Court opined that Ms. Clingerman was not a party to Contract 6250. (App. Doc. D24, ex. 4).

16. The 19 January 2009 forwarding letter and the 19 January 2009 invoice SER 9-11 did not expressly refer to the CDA or the Disputes clause of the contract, or use the word "claim," or request a contracting officer's final decision on the invoice (Notice of Appeal, ex. 14).

17. By letter dated 26 January 2009, ACO Claude W. Armentrout rejected invoice SER 9-11 on the grounds that (i) it was billed against the total estimated price of the contract as to which no funds had been obligated; and that (ii) invoicing must be against individual delivery orders, not the basic contract. The ACO's letter noted that Delivery Order Nos. 0001 and 0004 had been paid in full, but that there were unbilled balances of $15,000 and $30,000 on Delivery Order Nos. 0002 and 0003 respectively for which Parker "may submit properly substantiated invoices." The ACO's letter did not state that it was a contracting officer's final decision, nor did it give notice of appeal rights. (App. supp. R4, tab 3)

18. On 2 February 2009, Mr. Grove replied to Parker's submission of invoice SER 9-11 to him as follows:

> Mr. Parker, As you are aware, I left the Training Systems Product Group (ASC/YW) in October 2004 to accept a position at HQ Air Force Materiel Command. At this point, my Aeronautical Systems Center Contracting Officer's Warrant was no longer valid. I have not held a Contracting Officer's Warrant since October 2004. Therefore, I am not authorized to act on your request. Any actions related to contract FA8621-04-D-6250 will have to be

> addressed to the cognizant Administrative Contracting Officer (ACO) or Procuring Contracting Officer (PCO). (App. supp. R4, tab 1) Parker characterizes the foregoing response as "CO MICHAEL L. GROVE FINAL DECISION 02FEB2009" (id.).

19. On 6 February 2009, Parker submitted a Notice of Appeal to the Board which read in pertinent part as follows:

> NOTICE OF APPEAL OF PARKER INTERNATIONAL (PI)
>
> ....
>
> CONTRACT FA8621-04-D-6250 CLOSEOUT Deemed Denial of Claim for Invoice 0805 (Exhibit 13 P. 25) Denial of Certified Claim for Invoice 0911 (Exhibit 14 P. 27) Request for Alternative Dispute Resolution of Requests for Equitable Adjustments Request for Bilateral SF30 Ratification of a New Contracting Officer As May Be Required Request for Stay for New Contracting Officer Final Decisions As May Be Required
>
> By /s/ Guy W Parker
> Director of Engineering
> 14924 Conchos Dr. Poway, CA 92064

(Notice of Appeal at i)

20. There is no evidence that any of the "requests" in the Notice of Appeal were submitted as CDA claims for decision by a contracting officer prior to the 6 February 2009 Notice of Appeal.

21. In his document "D24" submitted to the Board on 10 August 2009, Parker states: "ASBCA 56742 is a non-monetary dispute for Claims Requests for Equitable Adjustments that requests a Notice of

Termination for Convenience and the appointment of an independent DCMA Termination Contracting Officer based on Public Law 109-364 120 Stat. 2331 § 832 wherein no future delivery orders could be issued after that Congressional Act" (app. doc. D24 at 22). There is no evidence of (i) any such "request" being submitted to the contracting officer as a CDA claim or (ii) a contracting officer's CDA decision on any such request prior to Parker's 6 February 2009 Notice of Appeal.

DECISION

A. Invoice SER 0805

Parker's invoice SER 0805 was submitted on 2 May 2007 as a certified claim with an express request for a contracting officer's decision (SOF ¶ 12). The claim was denied entirely by CO Clingerman in a final decision dated 27 June 2007. The final decision advised Parker of his rights to appeal the decision to this Board within 90 days of receipt, or to the Court of Federal Claims within 12 months of receipt of the decision. There is no evidence in the record of a timely appeal by Parker either to this Board or to the Court of Federal Claims. (SOF ¶ 13)

On 28 July 2009, the Board, sua sponte, ordered Parker to show cause why the present appeal on an alleged deemed denial of its claim for SER 0805 should not be dismissed as untimely.[3] Subsequent to this order, Parker has made a number of submissions that, to the extent relevant to the order to show cause, argue that CO Clingerman was not an authorized contracting officer. This argument is without merit. When CO Clingerman issued her 27 June 2007 COFD on Parker's claim for payment of his invoice SER 0805, she was a warranted

contracting officer of the Air Force (SOF ¶ 5). The present appeal from that decision is untimely and we have no jurisdiction thereof.

[FN3] Parker refuses to accept certified mail (app. doc. D20A at 1, D24 at 1). The order to show cause was sent by both certified and uncertified USPS mail. We regard the certified letter containing the order to show cause as being delivered on 8 August 2009, the date the USPS notice of the letter, with instructions for pick-up or redelivery, was left at Parker's business address per USPS Track & Confirm.

[**Contractor Note Added to FN3 above:** The document referred to as "order to show cause" was sent from a private office in New York, not from ASBCA. The document as entered into the tribunal records has no Administrative Judge name or signature and no ASBCA markings. A response was timely provided so noted.]

B. Invoice SER 9-11

The government moves to dismiss the appeal as to the denial of invoice SER 9-11 on the ground that the invoice was not a claim under the CDA because it did not include an express request for a contracting officer's final decision. Parker opposes the motion on the grounds that: "A permanent deemed denial occurred due to the 48 C.F.R § 4.101 Procuring Contracting Officer's (PCO) voluntary election to create a void by not providing a bilateral SF30 Modification with equitable adjustment to change the PCO" (app. "RESPONSE TO 20 MAY 2009 MOTION TO DISMISS AND ASBCA BOARD MEMBER CONGRESSIONAL INQUIRY 13 MAY 2009" at 1, 4, 10).

The record on the motion clearly establishes that CO Clingerman has been a duly appointed contracting officer from 1982 to the present time and has performed contracting officer duties on Contract 6250 and the delivery orders issued thereunder since 2005 (SOF ¶ 5). Her signature as contracting officer appears on all of the contractual documents and correspondence in the record originating from the government since that time. Parker cannot credibly claim that he did not know that she had replaced the original contracting officer Mr. Grove. (SOF ¶¶ 4, 6-9, 13) The government had complete discretion in the assignment, substitution and replacement of its contracting officers on Contract 6250. It was not required to modify the contract either by unilateral or bilateral modification to effect such changes. Parker cites no statute, regulation, or contract provision applicable to Contract 6250 to the contrary.[4] At no time has there been a "void" in contracting officer authority to receive and decide CDA claims under or relating to Contract 6250.

[4] In his 26 May 2009 "addition" to his response to the motion to dismiss, Parker includes an "example of SF30 modification to contract change of contracting officer." The example is a modification to a contract awarded by the National Aeronautics and Space Administration (NASA). Whatever may be the NASA practice in modifying contracts for changes of contracting officer, it is irrelevant to Contract 6250 that was awarded by the Air Force.

The issue for decision on the motion with respect to the claim for invoice SER 9-11 is whether Parker submitted that invoice as a "claim" under the CDA to the contracting officer for a decision. See 41 U.S.C. §

605(a). The record is clear that he did not. Neither the invoice itself nor the forwarding letter stated the invoice was a claim under the CDA, nor did either document request a contracting officer's final decision under the CDA, nor was either document addressed to the cognizant procuring activity CO, or to the procuring activity itself. It is further clear from the forwarding letter that the failure to address invoice SER 9-11 to the procuring activity contracting officer (CO Clingerman) was deliberate and taken on the entirely specious and irrelevant ground that she was not "a party" to the contract. Moreover, since this was the first time that the invoice was presented for payment and was not identified by Parker as a CDA claim, ACO Armentrout was correct in treating it as what it purported to be, and not as a CDA claim requiring a final decision. (SOF ¶¶ 14-17)

The appeal is dismissed for lack of jurisdiction.

Dated: 21 September 2009

MONROE E. FREEMAN, JR. Administrative Judge Armed Services Board of Contract Appeals I concur I concur MARK N. STEMPLER Administrative Judge Acting Chairman Armed Services Board of Contract Appeals EUNICE W. THOMAS Administrative Judge Vice Chairman Armed Services Board of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 56742, Appeal of Guy W. Parker d/b/a Parker International, rendered in conformance with the Board's Charter. Dated: CATHERINE A. STANTON Recorder, Armed Services Board of Contract Appeals 10

## A2: FA8621-04-D-6250 SF26 P. 1

The Office of the Clerk letter 17AUG2010 requested this Appendix A2 8.5" x 11" document found within ASBCA 56742 Contractor Rule 4(b) Appeal File E13 P. 20 http://www.welaw.org/US/Rule_4B_File.pdf and http://www.welaw.org/US/A02.pdf be text replaced.

Instructions for filling out the SF26 are found at: http://www.acq.osd.mil/dpap/JCC/Contingency%20Model/FormsPubsRegs/forms/SF%2026%20Instructions.doc.

This contract's Standard Form 26 (Rev 4-83) prescribed by GSA FAR 48 C.F.R. 53.214(a), is the first page of fourteen pages of Contract FA8621-04-D-6250. The Standard Form SF26 has twenty blocks of information required by P. L. 95-563 amended Section 6 and 48 C.F.R. partly presented here:

| **SF26** | **Contents of SF26 Selected Blocks** |
|---|---|
| Block 2 | Contract #: FA8621-04-D-6250 |
| Block 3 | Distribution Date: 22MAR2004 |
| Block 5 | Issued by: USAF/AFMC/ASC/YWK |
| Block 6 | ACO: S3605A DCMA DAYTON |
| Block 15G | Total Contract Amount: $3,000,000.00 |
| Block 17 | X: Contractor's Negotiated Agreement |
| Block 20A | Name of Contracting Officer: MICHAEL L. GROVE |
| Block 20B | Signature of The Contracting Officer: MICHAEL L. GROVE |
| Block 20C | Date of Michael L. Grove Signature: 12MAR2004 |

## A3: SF30 CHANGE OF CONTRACT OFFICER

The Office of the Clerk letter 17AUG2010 requested this Appendix A3 8.5" x 11" document found at http://www.welaw.org/US/A03.pdf be text replaced.

Standard Form 30 (SF30) Modification to Contract (Rev. 10-83) is prescribed by GSA FAR (48 C.F.R.) 53.243. A SF30 is composed of sixteen blocks partly provided here:

| SF30 | Contents of Selected Blocks |
|---|---|
| Block 10A | Contract #: NNM06AB29T |
| Block 10B | Date: October 1, 2006 |
| Block 11 | Unchecked |
| Block 12 | Accounting and Appropriations Data:<br>Checked Item B: The above numbered contract/order is modified to reflect the administrative changes set forth in Block 14. |
| Block 14 | The purpose of this modification is to change the Contracting Officer for the Digital Fusion Solutions, Inc. Contract/Tack Order NNM06AB29T from PS32/Artra C. House to PS33/ Rhoney Triplett. |
| Block 16A | Name of Contracting Officer:<br>Artra C. House, Contracting Officer |
| Block 16B | Hand Signature of: Artra C. House |
| Block 16C | Date of Artra C. House Signature:<br>12MAR2004 |

## A4: BWC 1992 SES/DCS SF1402 COA

The Office of the Clerk letter 17AUG2010 requested this Appendix A4 8.5" x 11" document found within ASBCA 56742 Contractor Rule 4(b) Appeal File E82 P. 247 http://www.welaw.org/US/Rule_4B_File.pdf and at http://www.welaw.org/US/A04.pdf be text replaced.

### Certificate of Appointment

Under authority vested in the undersigned and in conformance with Subpart 1.6 of the Federal Acquisition Regulation

*Betty W. Clingerman*
is appointed
Contracting Officer
for the
United States of America

Subject to the limitations contained in the Federal Acquisition Regulation and to the following:

Unless sooner terminated, this appointment is effective as long as the appointee is assigned to

| | |
|---|---|
| Organization: | [Blank Organization] [NULL] |
| Agency/Department: | United States Air Force |
| Signature/Title: | Samuel L. Croucher, SES, Assistant DCS, Contracting |
| Date: | 1 July 1992 |
| No.: | ASC-92-298 |

## A5: BWC COMPETING CONTRACT OFFICER

The Office of the Clerk letter 17AUG2010 requested this Appendix A5 8.5" x 11" document found within ASBCA 56742 Contractor Rule 4(b) Appeal File E62 P. 159 http://www.welaw.org/US/Rule_4B_File.pdf and at http://www.welaw.org/US/A05.pdf be text replaced.

This DD FORM 1115, JAN 1998 has forty-two blocks. This USAF/AFMC/ASC/YWPF form is dated 03JUN2005 after USAF/AFMC/ASC/YW was dismantled and decommissioned JAN2005. This document is for delivery order 0007 on SF26 Indefinite Delivery Indefinite Quantity Contract F33657-01-D-2077. Partial block content is:

| **DD1115** | **Contents of Selected Blocks** |
|---|---|
| Block 1 | Contract #: F33657-01-D-2077 |
| Block 2 | Delivery Order 0007 |
| Block 3 | Distribution Date: 03JUN2005 |
| Block 24 | Name of Ordering Officer:<br>Betty W. Clingerman |
| Block 24 | Hand Signature of: Betty W. Clingerman |
| Block 24 | Date of Betty W. Clingerman Signature:<br>03JUN2005 |
| Block 25 | FOIA: Total: Blacked Out with Felt Pen |

This is a delivery order competing for same goods and services as the 2004-2008 Sole Source Contract FA8621-04-D-6250 at the same locations.

## A6: 56742 NONMONETARY DISPUTE CLAIM

The Office of the Clerk letter 17AUG2010 requested this Appendix A6 8.5" x 11" document found at http://www.welaw.org/US/A06.pdf be text replaced.

The Parker International Letter January 19, 2009 partial content is:

| Location | Content |
|---|---|
| Date: | January 19, 2009 |
| To: | ACO David Slater<br>Brenda Johnson<br>CO Michael L. Grove |
| Subject: | Invoice SER 9-11<br>Contract Firm Fixed Price FA8621-04-D-6250 |
| ¶ 1: | There is one invoice appended to this document, SER 9-11. .... |
| ¶ 2: | .... |
| ¶ 3: | .... |
| ¶ 4: | Betty W. Clingerman is not party to this contract as evidenced in the attached United States District Court Southern District of California Court Order. |
| Signature: | /s Guy W. Parker Hand Signature of Guy W. Parker |
| Date: | January 19, 2009 |

## A7: CO OF RECORD NMD ANSWER 02FEB2009

The Office of the Clerk letter 17AUG2010 requested this Appendix A7 8.5" x 11" document found within ASBCA 56742 Contractor Rule 4(b) Appeal File E1 P. 10 http://www.welaw.org/US/Rule_4B_File.pdf and at http://www.welaw.org/US/A07.pdf be text replaced.

| Location | Content |
|---|---|
| From: | Grove, Michael L. Civ USAF AFMC HQ AFMC/PK |
| To: | PI; AG ADR Moderator |
| Subject: | Invoice SER 9-11 January 19, 2009 |
| Date: | Monday, February 02, 2009 11:56 AM |
| ¶ 1: | As you are aware, I left the Training System Product Group (ASC/YW) in October 2004 to accept a position at HQ Air Force Material Command. .... |
| ¶ 2: | .... |
| ¶ 3: | Thanks,<br>Michael L. Grove<br>HQ AFMC/PKPB<br>.... |

## A8: FAR § 1.6, § 4.101, § 33.211

**FAR 1.601 General.**
(a) Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. Contracts may be entered into and signed on behalf of the Government only by contracting officers. In some agencies, a relatively small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under 1.603.

**FAR 1.602-1 Authority.**
(a) Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see 1.603-1) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel. (b) No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

**FAR 1.602-2 Responsibilities.**
Contracting officers shall- a) Ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation; (b) Ensure that contractors receive impartial, fair, and equitable treatment; and (c) Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

**FAR 1.603 appointment.**
**FAR 1.603-1 General.**
Subsection 414(4) of title 41, United States Code, requires agency heads to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments. These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 92-3, Procurement Professionalism Program Policy-Training for Contracting Personnel, June 24, 1992

**FAR Subpart 4.1- Contract Execution**
**FAR 4.101 Contracting officer's signature.**
Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart).

**FAR Subpart 33.2- Disputes and Appeals**
**FAR 33.211 Contracting officer's decision.**
(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall-

(1) Review the facts pertinent to the claim; (2) Secure assistance from legal and other advisors; (3) Coordinate with the contract administration office or contracting office, as appropriate; and (4) Prepare a written decision that shall include a- (i) Description of the claim or dispute; (ii) Reference to the pertinent contract terms; (iii) Statement of the factual areas of agreement and disagreement; (iv) Statement of the contracting officer's decision, with supporting rationale; (v) Paragraph substantially as follows: This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's small claim procedure for claims of $50,000 or less or its accelerated procedure for claims of $100,000 or less. Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this

decision; and (vi) Demand for payment prepared in accordance with 32.610(b) in all cases where the decision results in a finding that the contractor is indebted to the Government. (b) The contracting officer shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement shall apply to decisions on claims initiated by or against the contractor.

(f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the tribunal concerned to direct the contracting officer to issue a decision in a specified time period determined by the tribunal.

(g) Any failure of the contracting officer to issue a decision within the required time periods will be deemed a decision by the contracting officer denying the claim and will authorize the contractor to file an appeal or suit on the claim.

## A9: 41 U.S.C. § 605 (D-E) AND § 613

**41 U.S.C. § 605 Decision by contracting officer**
(d) **Alternative means of dispute resolution:**

Notwithstanding any other provision of this chapter, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, or other mutually agreeable procedures, for resolving claims. The contractor shall certify the claim when required to do so as provided under subsection (c)(1) of this section or as otherwise required by law. All provisions of subchapter IV of chapter 5 of title 5 shall apply to such alternative means of dispute resolution.

(e) **Termination of authority to engage in alternative means of dispute resolution; savings provision**:

In any case in which the contracting officer rejects a contractor's request for alternative dispute resolution proceedings, the contracting officer shall provide the contractor with a written explanation, citing one or more of the conditions in section 572 (b) of title 5 or such other specific reasons that alternative dispute resolution procedures are inappropriate for the resolution of the dispute. In any case in which a contractor rejects a request of an agency for alternative dispute resolution proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

**41 U.S.C. § 613 Separability**
If any provision of this chapter, or the application of such provision to any persons or circumstances, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those to which it is held ...

## A10: USCAFC RULE 34 ORDER

The Office of the Clerk letter 17AUG2010 requested this Appendix A10 8.5" x 11" document found at http://www.welaw.org/US/A10.pdf be text replaced.

### Federal Rules of Appellate Procedure
### Federal Circuit Rules

### Rule 34. Oral Argument

(a) In General.

(1) Party's Statement. Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) Standards. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

## A11: USDC-SDCA COMPLAINT EXHIBIT 11

The Office of the Clerk letter 17AUG2010 requested this Appendix A11 8.5" x 11" document found at http://www.welaw.org/US/A11.pdf be text replaced.

| Item | Content |
|---|---|
| Case: | 3:08-cv-00212-L-WMC<br>Complaint Document 1 Filed 02/04/2008<br>Page 25 of 29 Exhibit 11 |
| Title: | Demand Letter for Production of Required Documents |
| From: | Parker International |
| To: | Clingerman, Betty W., June Taylor |
| ¶ 1 | A demand request is made to provide the following documents on or before February 22, 2008 to verify if Betty W. Clingerman is the recorded Contract Officer of Record Standard Form 26 for the purposes of Public Law 95-563 (amended) (Contract Disputes Act of 1978): |
| ¶ 2 | 1: Betty W. Clingerman's Contract Officer Warrant prior to 2006; 2: Betty W. Clingerman's Contract Officer Authority after 2006; 3: The termination of contract authority of Michael L. Grove; 4: Michael L. Grove's Contract Officer Warrant prior to 2006; 5: 1: Michael L. Grove's Contract Officer Authority after 2006; 6: A Standard Form 26 signed by this contractor and Clingerman |
| ¶ 3 | Should you be unable to provide the documents on or before February 22, 2008 the court shall consider the documents do not exist, |
| Signed: | /s Guy W. Parker with hand signature |

## A12: USDC-SDCA COURT ORDER

The Office of the Clerk letter 17AUG2010 requested this Appendix A12 8.5" x 11" document found at ASBCA 56742 Contractor Rule 4(b) Appeal File E12 P. 18 http://www.welaw.org/US/Rule_4B_File.pdf and http://www.welaw.org/US/A12.pdf be text replaced.

| Item | Content |
|---|---|
| Title: | COURT ORDER:<br>BETTY W. CLINGERMAN IS NOT PARTY TO FA8621-04-D-6250 |
| Case: | Case 3:08-cv-00212-L-WMC Document 18 Filed: 3/13/2008 Page 1 of |
| Court: | UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA |
| Case: | Plaintiff: GUY W. PARKER<br>Defendant: BETTY W. CLINGERMAN<br>Case: Civil No. 08cv212 L(Wmc) |
| ¶ 1 | .... |
| ¶ 2 | The graveman of plaintiff's complaint is a contract between a government agency and plaintiff to which the name defendant is not a party. |
| Date: | March 13, 2008 |
| Signed: | M. James Lorenz [Appears as a Stamp]<br>United States District Court Judge |

## A13: FA862104D6250 CLAUSES H101-H103 ORDERING PROCEDURE (DEC 2003) P. 9 of 14

The Office of the Clerk letter 17AUG2010 requested this Appendix A13 8.5" x 11" document found within ASBCA 56742 Contractor Rule 4(b) Appeal File E13 P. 28 http://www.welaw.org/US/Rule_4B_File.pdf and at http://www.welaw.org/US/A13.pdf be text replaced. ASC/YW was decommissioned JAN2005. Selected parts are provided herein:

## FA862104D6250 CLAUSES H101-H103 ORDERING PROCEDURE (DEC 2003) P. 9 of 14

**H101 SOLICITATION NUMBER (APR 1998)**
Solicitation Number FA8621-04-D-6250

**H102 GUARANTEED FINAL REPORT (FEB 1997)**
If this contract is terminated prior to completion, the Contractor agrees to provide a final report in accordance Exhibit A Data Item.

**H103 ORDERING PROCEDURES (DEC 2003)**
(a) Performance can be authorized under this contract only by the issuance of individual orders signed by an ASC/YW Procuring Contracting Officer (PCO).

## A14: P. L. 95-563 92 STAT. 2384 SECTION 6 (A) DECISION BY THE CONTRACTING OFFICER

The Office of the Clerk letter 17AUG2010 requested this Appendix A14 8.5" x 11" document found at http://www.welaw.org/US/A14.pdf be text replaced. Selected parts are provided herein:

**92 STAT. 2384 PUBLIC LAW 95-563**
**NOV. 1, 1978**

**DECISION BY THE CONTRACTING OFFICER**

SEC. 6. (a) All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor.

Contractor claims. 41 USC 605. Information to contractor.

**FEDERAL ACQUISITION REGULATION**
**VOLUME I—PARTS 1 TO 51**
**Subpart 4.1—Contract Execution**

**4.101 Contracting officer's signature.**
Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract.

## A15: RULE 10 PRE-TRIAL CONFERENCE

### ASBCA Rule 10
### Prehearing or Presubmission Conference

(a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or **upon the application of either party**, arrange a telephone conference or call upon the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:

(1) simplification, clarification, or severing of the issues;

(2) the possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) agreements and rulings to facilitate discovery;

(4) limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) the possibility of agreement disposing of any or all of the issues in dispute; and

(6) such other matters as may aid in the disposition of the appeal.

(b) The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pre-trial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

http://docs.law.gwu.edu/asbca/info/pdf/ASBCA%20RULES%202007.pdf PDF P. 10 marked P. 5

## A16: RULE 10 PRE-TRIAL HEARING DENIAL

The Office of the Clerk letter 17AUG2010 requested this Appendix A16 8.5" x 11" document found at http://www.welaw.org/US/A16.pdf be text replaced. ASC/YW was decommissioned JAN2005. Selected parts are provided herein:

| Item | Content |
|---|---|
| Heading | ASBCA Logo |
| To: | Mr. Guy W. Parker<br>Maj Jonathan Widmann, USAF |
| Re: | ASBCA No. 56742 |
| | Appellant's request for submission of a prehearing brief and prehearing telephone conference is denied. |
| Signed | By Order of the Board<br>*David C. Houpe for*<br>Catherine A. Stanton<br>Recorder |

David C. Houpe, a ASBCA law clerk, does not have ASBCA signature authority for Recorder Catherine A. Stanton and does not have ASBCA Board Authority to issue the above ASBCA Board Order.

## A17: 9th CIRCUIT NEVADA COURT APPEAL

The Office of the Clerk letter 17AUG2010 requested this Appendix A17 8.5" x 11" document found at http://www.welaw.org/US/A17.pdf be text replaced. Selected parts are provided herein:

| Item | Content |
|---|---|
| Case | 09-17223 01/11/2010<br>Page : 1 of 1 DktEntry 7189044<br>United States Court of Appeals for the 9th Circuit. Filed Jan 11 2010 |
| Subject | D.C. NO. 2:08-CV-01200-LDG-LRL<br>U.S. District Court for Nevada, Las Vegas<br>MANDATE |
| ¶ 1 | The judgment of this Court, entered November 18, 2009, takes effect this date. |
| ¶ 2 | This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. |
| Signed | FOR THE COURT<br>Molly C. Dwyer<br>Clerk of the Court<br>Synitha Walker<br>Deputy Clerk |

## A18: CLINGERMAN SIGNED STATEMENT

The Office of the Clerk letter 17AUG2010 requested this 8.5" x 11" document found within ASBCA 56742 Contractor Rule 4(a) Appeal File T0 P. 7-12 on P. 11 http://www.welaw.org/US/Rule_4A_File.pdf and at http://www.welaw.org/US/A18.pdf be text replaced. Selected parts are provided herein:

| Item | Content |
|---|---|
| Title | ASBCA No. 56742<br>Appeal of Parker International<br>Contract No. FA8621-04-D-6250<br>Government Rule 4(a) Appeal File<br>Attorney Copy<br>Submitted by [Competing Contract]<br>Delivery Order Officer Betty W. Clingerman |
| ¶ 20 | AF letter dated 12 Feb 07 is a CO demand letter to return government property; it is not a CO final decision nor is it a decision on a claim; therefore all references to 48 C.F.R. are not applicable. |
| Signed | Betty W. Clingerman w/ hand signature |
| Signed | Received 2009 MAR 6 a 10:28<br>ARMED SERVICES BOARD<br>OF CONTRACT APPEALS |

## A19: ASBCA 56928 MOTION TO RECONSIDER

http://www.asbca.mil/Decisions/2010/90253-v1-56928-NM.pdf

**OPINION BY ADMINISTRATIVE JUDGE FREEMAN**
**ON APPELLANT'S MOTION FOR RECONSIDERATION**
**ARMED SERVICES BOARD OF CONTRACT APPEALS**
**14 July 2010 Appeal of ASBCA No. 56928**

Guy W. Parker d/b/a Parker International (hereinafter "Parker") moves for reconsideration of our decision of 5 April 2010. In that decision we dismissed the appeal as to two claims for lack of jurisdiction and denied the appeal on the merits as to three claims. See Guy W Parker d/b/a Parker International, ASBCA No. 56928, 10-1 BCA ¶ 34,416. On reconsideration we find no error and affirm our decision.

Parker's motion for reconsideration states in its entirety, omitting only the footnotes:

> This Rule 29 Motion to Reconsider ASBCA 56928 Decision 07APR20 10 includes in Brief and Affidavit law and facts that exist in the Rule 13 Record. The Rule 5(b) Request for Equitable Adjustments Decision was litigated outside ASBCA jurisdiction and was not adjudicated solely upon the Rule 13 record. ASBCA accepted non-monetary dispute jurisdiction of the single 56928 Claim.
>
> ASBCA 56928 Non-Monetary Dispute Claim: "This contractor is bound by 48 C.F.R. § 4.101 to only recognize Michael L. Grove as the Public Law 95-563 SF26 48 C.F.R. § 4.101 Contracting Officer of Record. Should Michael L. Grove be

> unable to respond, Mrs. Patsy Reeves Director of Contracting Aeronautical Systems Center, WPAFB is the default contracting office [r]. In order to comply with substantial law Public Law 96-563 (amended) a substantial material or constructive change in this contract occurs if the 48 C.F.R. § 4.101 Contracting Officer of Record becomes unable to respond or disabled. Please provide a 48 C.F.R. § 33.211 Final Decision within 60 days from the date of receipt of this document for Breach of Contract based on Admission of Facts 1 through 36."

(Mot. at 1)

The motion is signed by Mr. Parker and by Mr. Alan C. Gaudette. Mr. Gaudette is identified in his signature block as "ADR Moderator Contract FA8621-04-D-6250" (id.). The motion is followed by a three-page brief signed by both Mr Parker and Mr. Gaudette, and by a nine-page "affidavit" signed only by Mr. Gaudette (mot. at 4-15). Mr. Gaudette's "affidavit" sets forth alleged facts, for which Mr. Gaudette claims personal knowledge, inextricably mixed with legal argument and citations.

Parker contends in his motion and brief that the Board's decision was in error because (i) the decision litigated monetary claims that were "outside ASBCA jurisdiction" and (ii) the decision "was not adjudicated solely upon the Rule 13 record" (mot. at 1). With respect to the first alleged error, the first sentence in Parker's 29 August 2009 Notice of Appeal ("NOA") states:

> This Notice of Appeal is sourced from Michael L. Grove's ... and Patsy J. Reeves' ... deemed denial of certified Claims for Equitable Adjustments

(Exhibit 2 P. 22) served 04APR2009 received 06APR2009 (Exhibit 3 P. 23-24) with claims, quantum and basis (Exhibit 4 P. 25-27) [emphasis added].

(NOA at 1)

Parker's NOA summarizes the subject matter and amount of four monetary "CERTIFIED REQUESTS FOR EQUITABLE ADJUSTMENTS" (NOA at 25-26). Parker's 5 September 2009 complaint sets forth the same four monetary claims with amended amounts (compl. ¶¶ 3-7, 10). Contracting Officer Clingerman decided these same four monetary claims in her 7 July 2009 final decision (gov't mot. to dismiss, attach. 8 at 2-3, 5-7, 9). On this record, these claims were clearly within our jurisdiction for purposes of the government's Motion to Dismiss (Partial) and for Summary Judgment which we granted in our 5 April 2010 decision.

With respect to the second alleged error, Parker appears to be complaining about the Board adoption of the Rule 4 file in Guy W Parker d/b/a Parker International, ASBCA No. 56742, 09-2 BCA ~.34,260 as part of the record in the present appeal, rather than relying solely on the papers submitted by the parties on the motion. Board Rule 13(a) expressly provides for inclusion in the record of "documents which the Board has specifically designated be made part of the record." Our adoption of the Rule 4 file in ASBCA No. 56742 included appellant's 150-document supplement to that file. Both parties were expressly advised of our action and both were given 30 days to submit any additional documents for the file. (Bd. corr. ltrs. dtd. 21 January and 1 February 2010) We find no error or prejudice to Parker in our

adoption of the Rule 4 file in ASBCA No. 56742 for the present appeal.

Parker's brief also rehashes its argument that Contracting Officer Clingerman was not a properly authorized contracting officer (app. br. at 6). Parker offers no new facts or argument not previously considered. Parker's argument has not improved with repetition and the Federal Circuit agrees with us. See Parker v. Donley, No. 2010-1153, 2010 U.S. App. LEXIS 11809, at *6 (Fed. Cir. June 9, 2010).

Parker concludes his brief for reconsideration with the following requested relief: "Remand of the Complaint to DCMA for a Terminating Contract Officer FAR Part 49 Termination for Convenience FFP-GFE contract closeout settlement negotiation and final decision outside of litigation" (app. br. at 6). We cannot grant this relief. Parker's Notice of Appeal appealed only the "deemed denial of certified Claims for Equitable Adjustments" (NOA at 1, 26). It did not appeal the denial of a claim for termination for convenience. Accordingly, the denial of a claim for termination for convenience is not before us on this appeal.

On reconsideration we affirm in all respects our decision of 5 April 2010.

Dated: 14 July 2010
MONROE E. FREEMAN, JR.
Administrative Judge Armed Services Board of Contract Appeals

## A20: USCAFC 2010-1153 MANDATE 02AUG2010

The Office of the Clerk letter 17AUG2010 requested this Appendix A20 8.5" x 11" document found at http://www.welaw.org/US/A20.pdf be text replaced. Selected parts are provided herein:

United States Court of Appeals for the Federal Circuit
2010-1153
GUY W. PARKER (doing business as Parker International), appellant
Michael B. Donley, SECRETARY OF THE AIR FORCE, Appellee.

Judgment
ON APPEAL from the Armed Service Board of Contract Appeals in CASE NO(S). 56742

This CAUSE having been heard and considered, it is ORDERED AND ADJUDGED: AFFIRMED

ENTERED BY ORDER OF THE COURT
DATED JUN – 9 2010
Signed for Jan Horbaly, Clerk by "Squiggly Initials"
IS ISSUED AS A MANDATE" AUG – 2 2010

## A21: FA8621-04-D-6250 SOLE SOURCE J&A
(ASBCA 56742 APPEAL FILE PAGES 429-432)

The Office of the Clerk letter 17AUG2010 requested this document found within ASBCA 56742 Contractor Rule 4(B) Appeal File E142 P. 429-432 http://www.welaw.org/US/Rule_4B_File.pdf and at http://www.welaw.org/US/A21.pdf be text replaced. Contract Attachment 2 ¶ 1.2 Background repeats ¶ 3. Selected parts are provided herein:

| Item | Content |
|---|---|
| Title | Justification Review Document<br>Contracting Activity: ASC/YWP |
| Sign | Contract Officer: Michael L. Grove 26NOV03<br>Chief Engineer: Anthony J. DalSAasso<br>Local Legal: Bridget E. Lyons<br>Buying Office: Charles W. Cooplis, Jr.<br>Advocate: Milton C. Ross |
| ¶ 1 | This justification for Other than Full and Open Competition is being executed by ASC/YWP a branch of ASC's Training System Product Group on behalf of ACC TRSS/TSF. Funding will be provided under AF Form 616 using 3400 (Operation and Maintenance) funds. |
| ¶ 3 | .... The Predator MTTs are currently installed at ISAFAF, Nellis AFB, and at Det 1 ACC/TRSS Luke AFB; they were developed though mixed government and private commercial funding. ACC/TRSS Det 1, Luke AFB, manufactured and maintains the mechanical and electrical components of the eight (8) MTTs. Parker International (Poway, CA) initially developed the MTT, providing the system design, system software, test, verification, and training dataset development. .... |

## A22: FA8621-04-D-6250 H101 SOLICITATION

The Office of the Clerk letter 17AUG2010 requested this Appendix A22 8.5" x 11" document found within ASBCA 56742 Contractor Rule 4(b) Appeal File on P. 28 http://www.welaw.org/US/Rule_4B_File.pdf and at http://www.welaw.org/US/A22.pdf be removed. Incorporated into Contract Clause H101, partial contents are extracted and placed here:

PIXS – Preaward Information eXchange System
04D6250 – Predator
Last Update 11/7/2003 8:57:57 AM

.....

The government does not own the data rights for the system and, therefore, cannot compete this effort. The contract to be awarded will cite FAR 6.302-1, only one reasonable sour and no other supplies or services will satisfy agency requirements, as its authority and be supported by and approved Justification and Approval in which Parker International is specified as the sole source for this requirement.

....

Responses should be sent to: ASC/YWP, 2300 D Street, Wright-Patterson AFB. OH 45433-7249, Attn: Michael L. Grove. Any questions should be referred to the above Michael L. Grove, the Contracting Officer at 937-255-7414 ext. 3396, email @wpafb.af.mil.

....

4D6250 is an Aeronautical Systems Center (ASC) program. The current status is Pre-Solicitation and it is a Category A- Research and Development program. Solicitation No. FA8621-04-D6250 Response Date: DEC 08 03